

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ALLIED WASTE INDUSTRIES, INC.,  
formerly known as BROWNING-FERRIS  
INDUSTRIES, INC.,  
  
and  
  
WASTE MANAGEMENT  
OF ILLINOIS, INC.,  
  
Defendants.

## CONSENT DECREE

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## **I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Tri-County/Elgin Landfills Superfund Site near South Elgin in Kane County, Illinois ("the Site").

B. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the First Amended Complaint.

C. The Settling Defendants are respondents to Unilateral Administrative Orders, pursuant to which they have undertaken and continue to conduct remedial actions with respect to the Site. This Consent Decree does not supersede these Unilateral Administrative Orders.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607(a) and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purpose of this Consent Decree and the underlying First Amended Complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

#### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and the appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "Effective Date" shall mean the date of entry of this Consent Decree by the United States District Court for the Northern District of Illinois after satisfaction of the public notice and comment procedures of Section 122(i) of CERCLA, 42 U.S.C. § 9622(i).

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and Settling Defendants.

k. "Past Response Costs" shall mean all costs and prejudgment interest, including but not limited to direct and indirect costs that EPA, or DOJ on behalf of EPA, has paid or incurred in connection with the Site through the Effective Date of this Consent Decree provided, however, that "Past Response Costs" shall not include response costs paid or incurred by EPA, or DOJ on behalf of EPA, after December 31, 2006, related to the ongoing remedial action being implemented at the Site by the Settling Defendants pursuant to the UAOs.

l. "Plaintiff" shall mean the United States.

m. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

n. "Settling Defendants" shall mean Waste Management of Illinois, Inc. and Allied Waste Industries, Inc., for itself and on behalf of BFI Waste Systems of North America, LLC, formerly known as BFI Waste Systems of North America, Inc., successor in interest to Elgin Landfill Company, Van Der Molen Disposal Company, and Browning-Ferris Industries of Illinois, Inc.

o. "Settling Defendants' Related Parties" shall mean Settling Defendants' parents, affiliates, and subsidiaries, but only to the extent that the alleged liability of any such entity is based on the alleged liability of the involved Settling Defendant.

p. "Site" shall mean the Tri-County/Elgin Landfills Superfund site, encompassing approximately 66 acres, located near the Village of South Elgin, Kane County, Illinois, and generally shown on the map included in Appendix A.

q. "UAOs" shall mean the Unilateral Administrative Orders for the Site (No. V-W-00-C-569) issued on November 3, 1999 to: (1) Waste Management of Illinois, Inc. and Tri-County Landfill Company; and (2) Browning-Ferris Industries of Illinois, Inc. The UAOs are attached hereto as Appendix B.

r. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **V. PAYMENT OF RESPONSE COSTS**

4. Within thirty (30) days after the Effective Date of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$2,120,000.00 in reimbursement of Past Response Costs.

5. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Illinois following lodging of the Consent Decree.

6. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site Spill ID Number 052G, the DOJ case number 90-11-3-08672, and the civil action number 06C5245.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

#### **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

8. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$500.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party or parties making payment, the Site name, the EPA Region and Site Spill ID Number 052G, the DOJ Case Number 90-11-3-08672, and the civil action number 06C5245. Settling Defendants shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency, Region 5  
P.O. Box 371531  
Pittsburgh PA 15251-7531

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site Spill ID Number 052G, the DOJ Case Number 90-11-3-08672, and the civil action number 06C5245.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of either of the Settling Defendants to make the payments required under this Consent Decree, the other Settling Defendant shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

#### **VII. COVENANT NOT TO SUE BY UNITED STATES**

14. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants and Settling Defendants' Related Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendants and to the Settling Defendants' Related Parties and does not extend to any other person.

#### **VIII. RESERVATION OF RIGHTS BY UNITED STATES**

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Section VII. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants and Settling Defendants' Related Parties with respect to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

#### **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the EPA Hazardous Substance Superfund, United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the response actions at the Site, including any claim under the United States Constitution, the Constitution of the State of Illinois, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

17. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

18. Non-Exempt De Micromis Waiver. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

19. The *de micromis* waiver in Paragraph 18 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

20. De Minimis Waiver. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person that has entered into a final *de minimis* settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), with EPA with respect to the Site as of the Effective Date of this Consent Decree. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

21. Except as provided in Paragraphs 18 and 19 (Non-Exempt *De Micromis* Waiver) and 20 (*De Minimis* Waiver), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraphs 18 and 19 (Non-Exempt *De Micromis* Waiver) and 20 (*De Minimis* Waiver), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.

23. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within thirty (30) days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by United States set forth in Section VII.

#### **XI. SITE ACCESS**

25. If the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall, commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or to such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing response actions at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XII (Access to Information); and
7. Assessing Settling Defendants' compliance with this Agreement.

26. Notwithstanding any provision of this Consent Decree, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under the UAOs, CERCLA, RCRA, and all other applicable statutes and regulations.

## **XII. ACCESS TO INFORMATION**

27. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

28. Notwithstanding any provision of this Consent Decree, EPA retains all of its authorities and rights of access to information under the UAOs, CERCLA, RCRA, and all other applicable statutes and regulations.

29. **Confidential Business Information and Privileged Documents.**

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

30. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

### **XIII. RETENTION OF RECORDS**

31. Each Settling Defendant shall preserve and retain all records now in its possession or control or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary, in compliance with Section XVII of the UAOs.

### **XIV. NOTICES AND SUBMISSIONS**

32. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

#### **As to the United States:**

##### **As to DOJ:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ #90-11-3-08672)  
P.O. Box 7611  
Washington, D.C. 20044-7611

##### **As to EPA:**

Jeffrey A. Cahn  
Associate Regional Counsel  
Office of Regional Counsel  
U. S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 886-6670  
and  
John Fagiolo  
Remedial Project Manager

U.S. EPA, Region 5 (SR-6J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 886-0800

As to Settling Defendants:

As to Allied Waste Industries, Inc.:

Jo Lynn White, Esq.  
Deputy General Counsel  
Allied Waste Industries, Inc.  
18500 North Allied Way  
Phoenix, AZ 85054

and

Baerbel E. Schiller  
Spencer Fane Britt & Browne LLP  
1000 Walnut Street, Suite 1400  
Kansas City, Missouri 64106  
(816) 292-8123  
FAX: (816) 474-3216  
or  
1 North Brentwood Blvd., Suite 1000  
St. Louis, Missouri 63105  
(314) 333-3903  
FAX: (314) 862-4656

As to Waste Management of Illinois, Inc.:

Michael Peterson  
Project Coordinator  
Waste Management of Wisconsin, Inc.  
N 96 W13600 County Line Road  
Germantown, Wisconsin 53022

and

Lisa S. Zebovitz, Esq.  
Neal, Gerber & Eisenberg  
2 N. LaSalle Street  
Chicago, IL 60602

#### **XV. RETENTION OF JURISDICTION**

33. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### **XVI. INTEGRATION/APPENDICES**

34. This Consent Decree and its appendices constitutes the final, complete and exclusive agreement and understanding among the Settling Defendants with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a map of the Site; "Appendix B" is the UAOs.

#### **XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

35. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

36. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XVIII. SIGNATORIES/SERVICE**

37. Each undersigned representative of a Settling Defendant to this Consent Decree and the Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division of the United States Department of Justice certifies that such person is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

38. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

39. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree.

40. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

**XIX. FINAL JUDGMENT**

41. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
SUZANNE B. CONLON  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Allied Waste Ind., Inc. and Waste Management of Illinois, Inc.*, Civil Action No. 06 C 5245 (N.D. Ill.), relating to the Tri-County/Elgin Landfills Superfund Site.

FOR PLAINTIFF THE UNITED STATES OF AMERICA

MATTHEW J. McKEOWN  
Acting Assistant Attorney General  
Environmental and Natural Resources Division

Date: \_\_\_\_\_

W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division

Date: \_\_\_\_\_

MICHAEL J. ZOELLER  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Ben Franklin Station, PO Box 7611  
Washington, DC 20044-7611  
Tel: (202) 305-1478  
Fax: (202) 514-8395

PATRICK J. FITZGERALD  
United States Attorney

Date: \_\_\_\_\_

JONATHAN C. HAILE  
Assistant United States Attorney  
219 South Dearborn St., Suite 500  
Chicago, IL 60604  
Tel: (312) 353-5300

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD C. KARL  
Director, Superfund Division  
U.S. Environmental Protection Agency-Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3507

Date: \_\_\_\_\_

\_\_\_\_\_  
JEFFREY A. CAHN  
Associate Regional Counsel  
U.S. Environmental Protection Agency-Region 5 (C-14)  
77 West Jackson Blvd.  
Chicago, IL 60604-3507  
(312) 886-6670

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Allied Waste Ind., Inc. and Waste Management of Illinois, Inc.*, Civil Action No. 06 C 5245 (N.D. Ill.), relating to the Tri-County/Elgin Landfills Superfund Site.

FOR DEFENDANT WASTE MANAGEMENT OF ILLINOIS, INC.

Date: \_\_\_\_\_

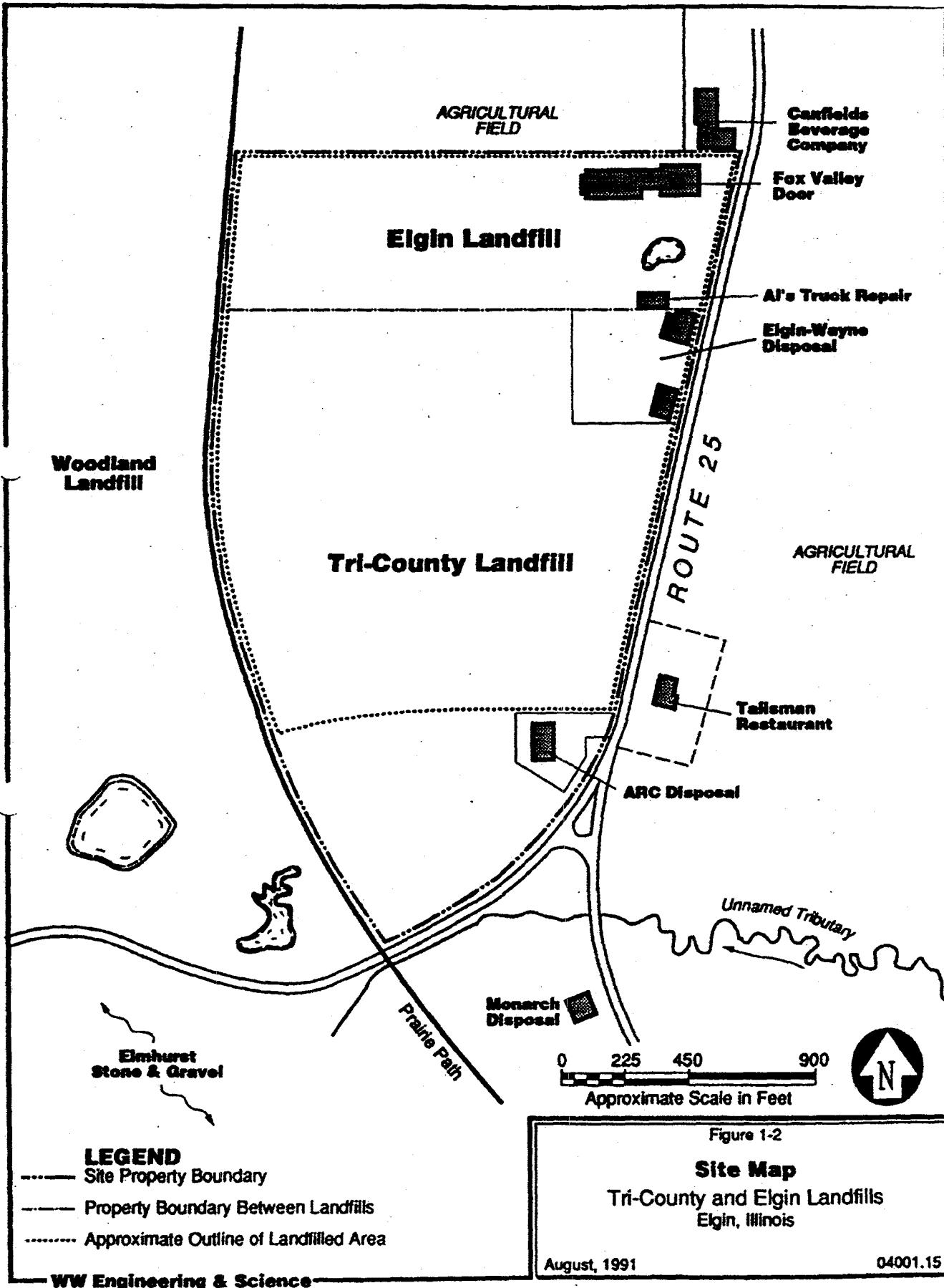
\_\_\_\_\_  
JACK DOWDEN  
Area Director  
Closed Site Management Group – Midwest Area  
Waste Management, Inc.  
N 96 W13600 County Line Road  
Germantown, Wisconsin 53022

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Allied Waste Ind., Inc. and Waste Management of Illinois, Inc.*, Civil Action No. 06 C 5245 (N.D. Ill.), relating to the Tri-County/Elgin Landfills Superfund Site.

FOR DEFENDANT ALLIED WASTE INDUSTRIES, INC., for itself and on behalf of BFI Waste Systems of North America, LLC

Date: \_\_\_\_\_

\_\_\_\_\_  
JO LYNN WHITE  
Deputy General Counsel  
Allied Waste Industries, Inc.  
Allied Waste Industries, Inc.  
18500 North Allied Way  
Phoenix, AZ 85054



119242



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 03 1999

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Browning-Ferris Industries of Illinois, Inc.  
Sue Honegger, Esq.  
Lathrop & Gage  
9401 Indian Creek Parkway  
1050/40 Corporate Woods  
Overland Park, Kansas 66210

Re: **Unilateral Administrative Order for the Tri-County/ Elgin Landfills Site**

Dear Ms. Honegger:

Enclosed please find a Unilateral Administrative Order issued by the U.S. Environmental Protection Agency ("U.S. EPA") under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within 20 days after issuance of the Order. If you have any questions regarding the Order, please contact Constandina K. Dalianis, Associate Regional Counsel, at (312) 353-1027, or John J. O'Grady, Remedial Project Manager, at (312) 886-1477.

Sincerely yours,

William E. Muno, Director  
Superfund Division

Enclosure

cc: Richard Lange, IEPA

Waste Management of Illinois, Inc.  
Lisa Zebovitz, Esq.  
Neal, Gerber & Eisenberg  
Two North LaSalle Street  
Chicago, Illinois 60602

Tri-County Landfill Company  
Edward M. Maher, Esq.  
Suite 101  
One Court Place  
Rockford, IL 61101

bcc: Constandina Dalianis, ORC (C-14J)  
John J. O'Grady, RPM (SR-6J)  
Gordon Blume, Public Affairs (P-19J) w/out attachments  
Records Center (SMR-7J)

V-W- '00 -C- 569

## The Tri-County/ Elgin Landfills Site

Respondent

**Proceeding Under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9606(a))**

## I. INTRODUCTION AND JURISDICTION

1

June 25, 1996, Explanation of Significant Differences, and to implement the design by performing a Remedial Action for the groundwater treatment remedy at the Elgin Landfill portion of the Site. This Order is issued to Respondents by the United States Environmental Protection Agency under the authority vested in the President of the United States by § 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926), and was further delegated to the Regional Administrator on September 13, 1987, by U.S. EPA Delegation No. 14-14 and 14-14A, and to the Director, Waste Management Division, Region V, by delegation 14-14B.

a. Issuance of this Order supercedes and replaces all terms, conditions and requirements of the Unilateral Administrative Order dated November 19, 1998, that was previously issued to Browning-Ferris Industries of Illinois, Inc..

## II. PARTIES BOUND

2. This Order shall apply to and be binding upon each Respondent identified in paragraph 8 and its successors and assigns. Each Respondent is jointly and severally responsible for carrying out all activities required by this Order. Failure of one or more Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondents. No change in the ownership, corporate status, or other control of any Respondent shall alter any of the Respondents' responsibilities under this Order.

3. Each Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, subcontractor, laboratory, or consultant retained to perform any work under this Order, within five (5) days after the effective date of this Order or on the date such services are retained, whichever is later. Respondents shall also provide a copy of this Order to any person acting on behalf of Respondents with respect to the Site or the work and shall ensure that all contracts and subcontracts entered into hereunder require performance under the contract to be in conformity with the terms and work required by this Order. With regard to the activities

undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of § 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, each Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents perform all work in accordance with this Order.

4. Not later than thirty (30) days prior to any transfer of any interest in any real property included within the Site, Respondents shall submit a true and correct copy of the transfer documents to U.S. EPA, and shall identify the transferee(s) by name, principal business address and effective date of the transfer.

### III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or are incorporated by reference into this Order, the following definitions shall apply:

a. "Cap Construction Explanation of Significant Differences" or "Cap ESD" shall mean the U.S. EPA Explanation of Significant Differences and all attachments thereto relating to the Site signed on April 23, 1998, by the Director of the Superfund Division, U.S. EPA Region 5. The Cap ESD is part of the administrative record supporting this Order, and is incorporated by reference as part of this Order.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day.

d. "Elgin Landfill Remedy Explanation of Significant Differences" or "Elgin Remedy ESD" shall mean the U.S. EPA Explanation of Significant Differences and all attachments thereto relating to the Site signed on July 14, 1999, by the Director of the Superfund Division, U.S. EPA Region 5. The Elgin Remedy ESD is part of the administrative record

supporting this Order, and is incorporated by reference as part of this Order.

e. "Elgin Landfill portion of the Site" shall mean that portion of the of the Tri-County/Elgin Landfills Superfund Site on the northern side of the Site that encompasses approximately 20 acres of land that includes the Elgin Landfill property located near the Village of South Elgin, Kane County, in northeastern Illinois, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and areas adjacent thereto. See Attachment 6.

f. "Groundwater Explanation of Significant Differences" or "Groundwater ESD" shall mean the U.S. EPA Explanation of Significant Differences and all attachments thereto relating to the Site signed on June 25, 1996, by the Director of the Superfund Division, U.S. EPA Region 5. The Groundwater ESD is part of the administrative record supporting this Order, and is incorporated by reference as part of this Order.

g. "Illinois EPA" shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of the State.

h. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund, established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

i. "National Oil and Hazardous Substances Pollution Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to § 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

j. "Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan(s) approved or developed by U.S. EPA pursuant to this Order and the attachments hereto.

k. "Owner Respondents" shall mean Waste Management of Illinois, Inc. and Tri-County Landfill Company.

l. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

m. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the Record of

Decision, as modified by both ESDs, and the Statement of Work, that the Remedial Action and Work required by this Order must attain and maintain.

n. "Record of Decision" or "ROD" shall mean the U.S. EPA Record of Decision relating to the Site, signed on September 30, 1992, by the Regional Administrator, U.S. EPA, Region V, and all attachments thereto, which is attached hereto and made a part hereof as Attachment 1.

o. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, the 100% Final Remedial Design, the Landfill Cap ESD, the Groundwater ESD, the Elgin Remedy ESD, the Remedial Action Work Plans, and other plans approved by U.S. EPA.

p. "Response Costs" shall mean all costs, including direct costs, indirect costs, and interest incurred by the United States to perform or support response actions at the Site, including, but not limited to, contract and enforcement costs.

q. "Section" shall mean a portion of this Order identified by a Roman numeral and includes one or more paragraphs.

r. "Section 106 Administrative Record" shall mean the Administrative Record which includes all documents considered or relied upon by U.S. EPA in preparation of this Order. The Section 106 Administrative Record Index is a listing of all documents included in the Section 106 Administrative Record, and is attached hereto as Attachment 5.

s. "Site" shall mean the Tri-County/ Elgin Landfills Site, encompassing approximately 66 acres of both the Tri-County and Elgin Landfills, located near the Village of South Elgin, Kane County, in northeastern Illinois, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and areas adjacent thereto.

t. "Special Account" shall mean a subaccount established within the Hazardous Substance Trust Fund pursuant to CERCLA Section 122(b)(3) which allows U.S. EPA to maintain and administer settlement funds on a site-specific basis.

u. "State" shall mean the State of Illinois.

v. "Statement of Work" or "SOW" shall mean the statement of work for

implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Attachment 2 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

w. "Tri-County portion of the Site" shall mean that portion of the of the Tri-County/Elgin Landfills Superfund Site on the southern side of the Site that encompasses approximately 47 acres of land that includes the Tri-County Landfill property and the Elgin-Wayne property located near the Village of South Elgin, Kane County, in northeastern Illinois, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and areas adjacent thereto. See Attachment 6.

x. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

y. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

z. "Work" shall mean all activities Respondents are required to perform under this Order and all attachments hereto, including, but not limited to, Remedial Design, Remedial Action and Operation and Maintenance.

aa. "100% Final Remedial Design" or "RD" shall mean the Remedial Design Document produced pursuant to the February 2, 1994, Administrative Order on Consent ("AOC"), and approved with modifications by U.S. EPA, in consultation with Illinois EPA, on September 30, 1997. The 100% Final Remedial Design document is part of the administrative record supporting this Order, and is incorporated by reference as part of this Order.

#### IV. DETERMINATIONS

6. Based on information available on the effective date of this Order, the U.S. EPA makes the following determinations:

a. The Site encompasses both the Tri-County and Elgin Landfills. The Site is located in northeastern Illinois on the east side of Kane County near the triple junction of Kane, Cook, and DuPage Counties. The two landfills were designated as one site because sampling results indicated that contaminants from the two landfills were commingled.

b. The Tri-County Landfill, an inactive landfill of approximately 46 acres, and the Elgin Landfill, a landfill of approximately 20 acres, are located 2/3 of a mile southeast of the Village of South Elgin.

c. The Tri-County Landfill property was part of a gravel mining operation prior to the 1940s. Disposal of industrial, commercial, and household waste began in April 1968 and continued until December 1976, under a series of disposal permits and owners/operators. The existing landfill cover was installed in early 1981.

d. The Elgin Landfill property was also the site of a sand and gravel mining business that was operated until the late 1950s. Waste disposal operations began in 1961 with the landfill accepting a variety of residential and commercial wastes, incinerator ash, and construction and demolition refuse. Waste disposal operations continued at the Elgin Landfill until approximately 1978. The property has recently been used for disposal of construction and landscaping material.

e. At present, several commercial enterprises operate out of buildings on top of the Site. The land to the west of the Site is occupied by the Woodland Landfill, an active sanitary landfill which has accepted municipal and selected special wastes since 1976. Immediately to the north of the Site is a State of Illinois conservation area. Northwest of the Site is agricultural land and wetland. To the south of the Site are undeveloped upland and wetland areas.

f. Hazardous substances have been and are threatened to be released at or from the Site, including both the Tri-County portion of the Site and the Elgin Landfill portion of the Site. Commercial, industrial, and domestic wastes were disposed of at the Site. Migration and degradation of these wastes resulted in a release of hazardous substances. Evidence suggests that disposal of certain types of industrial wastes have occurred at the Site, including benzene, chlorobenzene, 1,1-dichloroethane, chloroethane, 1,1,-dichloroethene, tetrachloroethene, acenaphthene, bis (2-chloroethyl) ether, 1,4-dichlorobenzene, aluminum, ammonia, arsenic, barium, boron, chloride, copper, cyanide, manganese, nickel, vanadium, zinc, chromium, vinyl chloride, trichloroethene, lead, mercury, and fluoride.

g. As a result of the release or threatened release of hazardous substances, U.S. EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future.

7. The following information was available at the time of this Order regarding site ownership, waste transporters, and waste generators:

a. Respondent Browning-Ferris Industries of Illinois, Inc. ("BFI") has been an owner and operator of portions of the Site, including the Elgin Landfill portion of the Site. During this time, hazardous substances were disposed of at the Site.

b. Respondent BFI accepted waste, including hazardous substances, for transport to, and disposal or treatment at, the Site, including the Elgin Landfill portion of the Site, and selected the Site for disposal or treatment.

c. Respondent BFI arranged, by contract or agreement or otherwise, for the disposal or treatment of, or arranged with a transporter for transport for disposal or treatment of, hazardous substances owned or possessed by them, including incinerator ash, and these hazardous substances were treated or disposed of at the Site, including the Elgin Landfill portion of the Site.

8. The Respondents identified in paragraph 7 are referred to as "Respondents."

9. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA placed the Tri-County/ Elgin Landfills Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 13, 1989, 54 Fed. Reg. 10512.

10. Enforcement History

a. On June 26, 1987, the potentially responsible parties ("PRPs") at the Site, including the Respondents, were notified in writing of the opportunity to conduct a Remedial Investigation and Feasibility Study (RI/FS) under U.S. EPA supervision. RI/FS negotiations ended in February, 1988, without an agreement having been reached with the PRPs.

b. On February 2, 1994, U.S. EPA entered into an Administrative Order on Consent ("AOC") with Waste Management of Illinois, Inc. ("WMI") and Browning-Ferris Industries of Illinois, Inc. ("BFI"). Under this AOC, WMI and BFI agreed to perform the Pre-Design and Remedial Design ("RD") activities at the Tri-County/Elgin Landfills Site. The Pre-Design Investigation Report was completed and approved by U.S. EPA on January 19, 1996. The Remedial Design was completed and approved by U.S. EPA on September 30, 1997.

c. Special Notice was sent to the PRPs, including the Respondents, on February 27,

1998. The 120 day Special Notice Moratorium originally expired on July 10, 1998, without an agreement having been reached on a Consent Decree ("CD"). U.S. EPA extended the negotiation moratorium until August 21, 1998, with provision for an additional extension (contingent upon sufficient progress) of two weeks until September 4, 1998. On August 21, 1998, BFI informed U.S. EPA that it did not intend to continue with negotiations. On August 25, 1998, WMI informed U.S. EPA that it did not intend to continue with negotiations. On August 26, 1998, the U.S. EPA sent WMI and BFI letters that officially terminated negotiations.

d. On September 24, 1998, a Unilateral Administrative Order for remedial action was issued to WMI and the Tri-County Landfill Company ("TCLC"). On November 19, 1998, a Unilateral Administrative Order for remedial action was issued to BFI.

11. In April, 1988, in response to a release or a substantial threat of a release of a hazardous substances at or from the Site, U.S. EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

12. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 24, 1992, in a major local newspaper of general circulation. U.S. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. Similarly, Respondents were given an opportunity to comment on the proposed plan for remedial action and to supplement the Administrative Record regarding a decision for selection of the final plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

13. The decision by U.S. EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 1992, on which the State has given its concurrence. The ROD includes U.S. EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA. The ROD is an enforceable part of this Order attached hereto as Attachment 1. The ROD is supported by an Administrative Record which contains the documents and information

upon which U.S. EPA based the selection of the response action. The U.S. EPA's selected response action set out in the ROD has been determined to provide adequate protection of public health, welfare and the environment; to meet all federal and State environmental laws; and to be cost effective.

14. Most of the residential properties in the vicinity of the Site are located in the Village of South Elgin, west of the Woodland Landfill, approximately one mile west of the Site. The residences nearest the Site are located along Dunham and Stearns Roads approximately 1,000 feet southeast of the site. A farm house is located approximately 1,200 feet north of the Site. Other residences, most of which are single-family dwellings, are scattered throughout the area surrounding the Site. Many of the homes and businesses in the area of the landfills rely on their own private wells to provide drinking water and water for general use.

15. The history of the Site includes two distinct disposal operations, the Tri-County Landfill and the Elgin Landfill. Historical aerial photographs indicate that these two disposal operations had overlapping disposal areas and the landfill wastes appear to be continuous between the two landfills. The Tri-County/Elgin Landfills are functionally one contiguous disposal unit with separate ownership and operating histories.

a. Waste disposal at the Tri-County Landfill reportedly began in April, 1968, and continued until December, 1976. Commercial and municipal wastes were disposed of at the Site. Inspection records on file at the Illinois EPA cite open dumping at the landfill and that the "area" method of land filling was occasionally used. Background data suggests that waste was disposed of directly into the abandoned gravel quarry. Problems reported at the landfill included: confined dumping, inadequate daily cover, blowing litter, fires, lack of access restrictions, and leachate flows. Although the landfill operations ceased in December of 1976, the existing cover was not emplaced until early 1981.

b. At the Elgin Landfill property, waste disposal operations began in 1961 under the name of the Elgin Landfill Company. Information indicates that from 1961 to 1968 residential and commercial wastes were disposed at the Elgin Landfill. From 1968 to 1972, the Elgin Landfill accepted waste and incinerator ash from residential and commercial customers. The Elgin Landfill continued to accept wastes after 1972, until approximately 1978, pursuant to

various disposal permits.

16. The U.S. EPA conducted a Remedial Investigation and Feasibility Study (RI/FS) from 1988 to 1992, to define the nature and extent of contamination and evaluate alternatives for Site cleanup. The RI identified contamination in soil, sediment, and ground water, and determined that a primary pathway for the contaminants to migrate off-site is through rain and snowmelt infiltrating through the inadequate landfill cover, leaching contaminants from the landfilled materials, and transporting the contaminants to ground water and surface water by surface and subsurface flow. The U.S. EPA completed the RI Report on July 24, 1992, and the FS Report on July 24, 1992. The Final RI/FS Report was approved on September 30, 1992. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the U.S. EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 24, 1992, in a major local newspaper of general circulation. The U.S. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

a. Results from the initial RI fieldwork identified contaminated ground water in the northwest portion of the Tri-County Landfill. Based on the preliminary information, it was not possible to determine if the ground water was being impacted by: 1) only the Tri-County Landfill, 2) both the Tri-County Landfill and the adjacent Elgin Landfill, or 3) only the Elgin Landfill. Therefore, it was necessary to expand the RI investigation to include an investigation of the adjacent Elgin Landfill. Contamination was discovered in the surface soils, surface water, sediments, and local ground water of both the Tri-County Landfill and the adjacent Elgin Landfill. It was also discovered that the Site generates a significant amount of landfill gas, which is venting to the air through openings in the landfill cover materials. The contamination at the Site was found to include a variety of contaminants.

b. The RI shows that the local ground water generally flows from the northeast to the southwest. The shallow ground water beneath the landfills is contaminated with a variety of contaminants, both organic and inorganic, above established drinking water standards. The results for the downgradient shallow ground water indicates contamination of benzene,

trichloroethene, and vinyl chloride slightly above established drinking water standards.

Numerous other chemicals have been detected at the Site.

17. Risk to Human Health, Welfare and the Environment

a. Following the RI, an analysis was conducted to estimate the potential health or environmental problems that could result if remedial action was not taken at the Site. This analysis is referred to as the Baseline Risk Assessment. The RI investigation documented widespread contamination in most media. The northwest portion of the Site seems to be impacted mostly by organic contamination, while the southern portion was impacted mostly by inorganic contamination. Also, sediments located in the leachate ditch south of the landfill were significantly impacted by heavy metals in the leachate. In 1984, the U.S. EPA detected volatile organic contaminants in ground water monitoring wells downgradient of the site.

b. The Baseline Risk Assessment considered many potential scenarios to evaluate actual or potential risks from the Site. The Baseline Risk Assessment documented unacceptable risks (exceeding risks which may cause one additional cancer case in 10,000 people exposed over a lifetime) for the following potential exposure pathways: 1) Future ingestion of contaminated ground water, 2) Future dermal exposure to ground water contaminants, and 3) Current and future inhalation of contaminated fugitive dust and volatile emissions from the landfill. The highest risks were associated with inhalation of contaminated fugitive dust and volatile emissions (approximately 2 additional cancer cases in 10 people exposed over a lifetime). These Baseline Risk Assessment findings apply to both the Tri-County portion of the Site and the Elgin Landfill portion of the Site.

c. As many as 10,000 residents within 3 miles of the site use ground water as their source of drinking water. U.S. EPA investigation has found low level ground water contamination outside of the Site boundaries, contaminated surface water and sediment in an adjacent wetland, and widespread contamination in surface soils at the Site including volatile and semi-volatile organic compounds, pesticides, and heavy metals.

d. Most of the residential properties in the vicinity of the Site are located in the Village of South Elgin. Other residences, most of which are single-family dwellings, are scattered throughout the area surrounding the Site. Some of the homes and businesses in the area

of the Site rely on their own private wells to provide drinking water and water for general use. Several businesses operate on the Site, itself, using water from wells that penetrate the landfill. These businesses are currently advised against potable use of their wells.

18. On September 30, 1992, U.S. EPA signed a Record of Decision (ROD) selecting an impermeable landfill cap with an active landfill gas collection system and groundwater extraction and treatment. The Illinois EPA concurred with the Site remedy. The major components of the 1992 ROD include:

- ▶ excavation and consolidation under the landfill cap of approximately 3,000 cubic yards of sediments contaminated with heavy metals from the adjacent wetland;
- ▶ construction of a landfill cover in compliance with Title 35, Illinois Solid and Special Waste Management Regulations, section 807.305 and RCRA Subtitle D cover requirements, as applicable;
- ▶ collection, treatment, and disposal of leachate and contaminated groundwater at the landfill perimeter;
- ▶ active collection and treatment of landfill gases;
- ▶ comprehensive monitoring program to ensure the effectiveness of the remedy;
- ▶ institutional controls to limit land and groundwater use; and
- ▶ provisions for contingency measures to address new information or previously unknown problems, and flexibility on type and timing of the ground water response component.

19. On February 2, 1994, U.S. EPA entered into an Administrative Order on Consent ("AOC") with WMI and BFI. Under this AOC, Respondents agreed to perform the Pre-Design and Remedial Design ("RD") activities at the Site. The Remedial Design for the landfill cover was completed and approved by the U.S. EPA on September 30, 1997. The cover profile is significantly different from that specified in the ROD. The change was determined to be necessary in order to ensure long-term effectiveness, and promote short-term effectiveness and implementability. Section 117 (c) of CERCLA and Section 300.435(c)(2)(I) of the NCP establish procedures for explaining, documenting, and informing the public of significant changes to the remedy that occur after the ROD is signed. An ESD is required when the remedial action to be taken differs from the remedy selected in the ROD. Generally, an ESD is prompted when

significant new information becomes available during or after the public comment period for the ROD. In this case, U.S. EPA considered it appropriate to issue an ESD for the landfill cap, which was finalized April 23, 1998.

20. Remedy Design and Efficacy

a. The selected remedy is designed to address all unacceptable risks associated with the Site. The selected remedy will address: 1) the contaminated ground water currently migrating off-site, 2) the contaminated sediments located in the leachate ditch, 3) the contaminated surface soils which create an inhalation risk, 4) the emissions of landfill gases.

b. The U.S. EPA and Illinois EPA have conducted an analysis of the potential remedies and have developed a clean-up plan for the Site. The clean-up plan, or the preferred alternative, is a combination of remedies developed for the various contaminated media.

c. The selected remedy consists of draining the standing surface water on the Site and a small portion of the wetland area to the south of the Site. The contaminated sediments in the wetland will be excavated until local background concentrations are met. The contaminated sediments and the drummed drill cuttings stored on-site will be consolidated within the landfill area prior to construction of the cap. The affected area of the wetlands will be restored after excavation of the contaminated sediments.

d. Precipitation run-off will be drained to the wetland area south of the Site to make-up for the loss of ground water discharge to the area.

e. A ground water collection system, if the U.S. EPA determines that it is necessary, will collect contaminated ground water as it leaves the Site. The trenches will be placed in such a way to optimize the collection of the off-site contaminated ground water.

f. The emission of landfill gas will be controlled by an active collection system. The gas will be collected by extraction wells connected to a blower facility. The gas will pass through a condensate tank to remove moisture, and would then be treated on-site by flaring prior to being discharged to the atmosphere. The emission of the treated landfill gas will comply with all substantive requirements for control of landfill gas.

g. The selected remedy will contain and/or cap the landfill contents in accordance with established State and Federal laws and regulations.

21. The Site, including both the Tri-County portion of the Site and the Elgin Landfill portion of the Site, is a "facility" as defined in § 101(9) of CERCLA, 42 U.S.C. § 9601(9).
22. Each Respondent is a "person" as defined in § 101(21) of CERCLA, 42 U.S.C. § 9601(21).
23. Each Respondent is a liable party as defined in § 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under § 106(a) of CERCLA, 42 U.S.C. § 9606(a).
24. "Hazardous substances" as defined in § 101(14) of CERCLA, 42 U.S.C. § 9601(14) are present at the Site and at both the Tri-County portion of the Site and the Elgin Landfill portion of the Site.
25. These hazardous substances have been, are being, and threaten to be "released" from the Facility as that term is defined in § 101(22) of CERCLA, 42 U.S.C. § 9601(22).
26. Release of Hazardous Substances
- a. The past disposal and migration of hazardous substances from the Facility constitutes a "release".
- b. The potential for future migration of hazardous substances from the Site poses a threat of a "release" as defined in § 101(22) of CERCLA, 42 U.S.C. § 9601(22).
27. The release of one or more hazardous substances from the Facility is or may be presenting an imminent and substantial endangerment to the public health or welfare or the environment.
28. The actions required by this Order are necessary to protect the public health, welfare, or the environment and are consistent with the National Contingency Plan, as amended, and CERCLA.

#### V. NOTICE TO THE STATE

29. U.S. EPA has notified the State of Illinois, Illinois Environmental Protection Agency, that U.S. EPA intends to issue this Order. U.S. EPA will consult with the State and the State will have the opportunity to review and comment to U.S. EPA regarding all work to be performed, including remedial design, reports, technical data and other deliverables, and any other issues which arise while the Order remains in effect.

## VI. ORDER

30. Based on the foregoing, each Respondent is hereby ordered to comply with all of the provisions of this Order, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines contained in this Order, attached to this Order, or incorporated by reference into this Order.

## VII. WORK TO BE PERFORMED

31. Within five (5) days after the effective date of this Order, each Respondent that owns real property comprising any part of the Site shall record Notice of and/or a copy of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of said notice and/or Order is indexed to the title of each and every parcel of property owned by said Respondent at the Site, so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondents shall, within 15 days after the effective date of this Order, send notice of such recording and indexing to U.S. EPA.

32. All workplans, reports, engineering design documents, and other deliverables (workplans and deliverables), as described throughout this Order, shall be submitted to Illinois EPA (except documents claimed to contain confidential business information) and U.S. EPA. All workplans and deliverables will be reviewed and either approved, approved with modifications, or disapproved by U.S. EPA, in consultation with Illinois EPA. In the event of approval or approval with modifications by U.S. EPA, Respondents shall proceed to take any action required by the workplan, report, or other item, as approved or modified by U.S. EPA. If the workplan or other deliverable is approved with modifications or disapproved, U.S. EPA will provide, in writing, comments or modifications required for approval. Respondents shall amend the workplan or other deliverable to incorporate only those comments or modifications required by U.S. EPA. Within twenty-one (21) days of the date of U.S. EPA's written notification of approval with modifications or disapproval, Respondents shall submit an amended workplan or other deliverable. U.S. EPA shall review the amended workplan or deliverable and either approve or disapprove it. Failure to submit a workplan, amended workplan or other deliverable shall

constitute noncompliance with this Order. Submission of an amended workplan or other deliverable which fails to incorporate all of U.S. EPA's required modifications, or which includes other unrequested modifications, shall also constitute noncompliance with this Order. Approval by U.S. EPA of the (amended) workplan or other deliverable shall cause said approved (amended) workplan or other deliverable to be incorporated herein as an enforceable part of this Order. If any (amended) workplan or other deliverable is not approved by U.S. EPA, Respondents shall be deemed to be in violation of this Order.

33. In the event of an inconsistency between this Order and any subsequent approved (amended) workplan or other deliverable, the terms of this Order shall control.

34. Remedial Design Implementation

a. The Respondents shall implement for the Elgin Landfill portion of the Site the approved 100% Final Remedial Design for the remedy described in the Record of Decision for the Tri-County/ Elgin Landfills Site, as modified by the Explanation of Significant Differences dated July 14, 1999. The 100% Final Remedial Design and the Elgin Remedy ESD are incorporated by reference into and are an enforceable part of this Order.

b. Within sixty (60) days after the effective date of this Order, Respondents shall submit to U.S. EPA and Illinois EPA a work plan for the performance of the Remedial Action at the Elgin Landfill portion of the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the Record of Decision for the Tri-County/ Elgin Landfills Site, as modified by the Explanation of Significant Differences dated July 14, 1999, in accordance with this Order, the ROD, the 100% Final Remedial Design, and the design plans and specifications approved by U.S. EPA. Upon its approval by U.S. EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Order.

c. The Remedial Action Work Plan shall include the following: (1) The schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans and for implementation of all Remedial Action tasks; (4) methodology for implementation of the Construction Quality Assurance Plan ("CQAP"); (5) a groundwater monitoring plan; (6) methods for satisfying

permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the Remedial Design Document and shall identify the initial formulation of the Respondents' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

d. Upon approval of the (Amended) RA Workplan by U.S. EPA, Respondents shall implement the (Amended) RA Workplan in accordance with any and all instructions from U.S. EPA's Remedial Project Manager ("RPM") and in accordance with the schedules in the (Amended) RA Workplan. Unless otherwise directed by U.S. EPA, Respondents shall not commence remedial action at the Site prior to approval of the (Amended) RA Workplan. Any noncompliance with the approved (Amended) RA Workplan shall be a violation of this Order.

35. Remedial Design for the Groundwater Treatment Remedy

a. The Remedial Design for the Groundwater Treatment Remedy relates to implementation of the groundwater extraction and treatment component described in the Record of Decision for the Tri-County/ Elgin Landfills Site, dated September 30, 1992, and deferred by the June 25, 1996, Explanation of Significant Differences.

b. When U.S. EPA determines that implementation of the portions of the remedy deferred by the Groundwater ESD must begin, then, within 60 days after issuance by U.S. EPA of a written direction to begin such implementation ("Design Notice"), the Respondents shall submit to U.S. EPA, and Illinois EPA, a work plan for the design of the deferred portion(s) of the Remedial Action at the Elgin Landfill portion of the Site ("Supplemental Remedial Design Work Plan" or "Supplemental RD Work Plan"). The Design Notice will identify to the Respondents which deferred portion of the remedy is to be implemented. One or more Design Notices may be issued to implement the portions of the remedy set forth in the ROD and deferred by the Groundwater ESD. The Supplemental Remedial Design Work Plan(s) shall provide for design of the remedy set forth in the ROD, the Groundwater ESD and the SOW, as appropriate, and for

achievement of the Performance Standards and other requirements set forth in the ROD, the Groundwater ESD, this Order and the SOW. Upon its approval by U.S. EPA, the Supplemental Remedial Design Work Plan(s) shall be incorporated into and become enforceable under this Order. Within 60 days after U.S. EPA's issuance of Design Notice, the Respondents shall submit to U.S. EPA and the State a Health and Safety Plan for field design activities that conforms to the applicable Occupational Safety and Health Administration and U.S. EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Supplemental Remedial Design Work Plan(s) shall include plans and schedules for implementation of supplemental remedial design and supplemental pre-design tasks for the portions of the remedy deferred by the Groundwater ESD and identified in the SOW in accordance with the Design Notice(s).

c. Upon approval of the Supplemental Remedial Design Work Plan(s) by U.S. EPA and submittal of the Health and Safety Plan for all field activities to U.S. EPA and Illinois EPA, the Respondents shall implement the Supplemental Remedial Design Work Plan(s) at the Elgin Landfill portion of the Site. The Respondents shall submit to U.S. EPA and Illinois EPA all plans, submittals and other deliverables required under the approved Supplemental Remedial Design Work Plan(s) in accordance with the approved schedule for review and approval. Unless otherwise directed by U.S. EPA, Respondents shall not commence further Supplemental Remedial Design activities at the Site prior to approval of the Supplemental Remedial Design Work Plan(s).

d. The preliminary supplemental design submittal(s) shall include, at a minimum, the following: (1) design criteria; (2) results of any treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate supplemental design submittal(s), if required by U.S. EPA or if independently submitted by the Respondents, shall be a continuation and expansion of the preliminary supplemental design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final supplemental design submittal(s) shall include, at a minimum,

the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Elgin Landfill portion of the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

g. The pre-final/final supplemental remedial design submittal(s), upon approval by U.S. EPA, shall become part of the Remedial Design and shall be implemented as part of the Remedial Action.

h. Upon approval of the (Amended) Supplemental Remedial Design Workplan by U.S. EPA, Respondents shall implement the (Amended) Supplemental Remedial Design Workplan at the Elgin Landfill portion of the Site and submit all design deliverables according to the schedule in the approved (Amended) Supplemental Remedial Design Workplan. Any noncompliance with the approved (Amended) Supplemental Remedial Design Workplan shall be a violation of this Order.

36. Remedial Action for the Groundwater Treatment Remedy

a. Within sixty (60) days after the approval of any Supplemental Remedial Design for that portion of Remedial Action deferred by the Groundwater ESD, the Respondents shall submit to U.S. EPA and Illinois EPA, a work plan for the performance of the Groundwater Remedial Action at the Elgin Landfill portion of the Site (the "Groundwater Remedial Action Work Plan"). The Groundwater Remedial Action Workplan shall provide for construction and implementation of the remedy set forth in the ROD, as deferred by the Groundwater ESD, and achievement of the Performance Standards, in accordance with this Order, the ROD, and the design plans and specifications approved by U.S. EPA. Upon its approval by U.S. EPA, the Groundwater Remedial Action Workplan shall be incorporated into and become enforceable under this Order.

b. The Groundwater Remedial Action Workplan shall include the following: (1) the schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3)

schedule for developing and submitting other required Remedial Action plans and for implementation of all Remedial Action tasks; (4) methodology for implementation of the Construction Quality Assurance Plan ("CQAP"); (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Groundwater Remedial Action Workplan also shall include a schedule for implementation of all Remedial Action tasks identified in the Remedial Design Document and shall identify the initial formulation of the Respondents' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Groundwater Remedial Action Workplan by U.S. EPA, the Respondents shall implement the activities required under the Groundwater Remedial Action Workplan at the Elgin Landfill portion of the Site. The Respondents shall submit to U.S. EPA and the State all plans, submittals, or other deliverables required under the approved Groundwater Remedial Action Workplan in accordance with the approved schedule for review and approval. Unless otherwise directed by U.S. EPA, the Respondents shall not commence physical Remedial Action activities at the Site prior to approval of the Groundwater Remedial Action Workplan.

d. The Respondents shall continue to implement the Groundwater Remedial Action and O&M at the Elgin Landfill portion of the Site until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Order.

37. All work performed by Respondents pursuant to this Order shall, at a minimum, achieve the Performance Standards specified in the Record of Decision and the Statement of Work.

38. Nothing in this Order, or in U.S. EPA's approval of any (amended) workplan or other deliverable, shall be deemed to constitute a warranty or representation of any kind by U.S. EPA that full performance of the remedial design or remedial action will achieve the performance standards set forth in the ROD and in the Statement of Work. Respondents' compliance with such approved documents does not foreclose U.S. EPA from seeking additional work.

39. All materials removed from the Facility shall be disposed of or treated at a facility approved in advance of removal by U.S. EPA's RPM and in accordance with: 1) § 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); 2) the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6901, et seq., as amended; 3) the U.S. EPA "Revised Off-Site policy," OSWER Directive 9834.11, November 13, 1987; and 4) all other applicable federal, State, and local requirements. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for remedial action construction. Respondents shall provide written notice to the RPM which shall include all relevant information, including the information required by paragraph 40 below, as soon as practicable after the award of the contract and before the hazardous substances are actually shipped off-Site.

40. Prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, Respondents shall provide written notification to the appropriate state environmental official in the receiving state and to U.S. EPA's RPM of such shipment of hazardous substances. However, the notification of shipments to the state shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the state will not exceed ten (10) cubic yards. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

41. Respondents shall cooperate with U.S. EPA in providing information regarding the work to the public. When requested by U.S. EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by U.S. EPA to explain activities at or relating to the Site.

42. Within thirty (30) days after Respondents conclude that the remedial action has been fully performed, Respondents shall so notify U.S. EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondents and U.S. EPA. The pre-certification

inspection shall be followed by a written report submitted within thirty (30) days of the inspection by a registered professional engineer or Respondents' Project Coordinator certifying that the remedial action has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the written report, U.S. EPA determines that the remedial action or any portion thereof has not been completed in accordance with this Order, U.S. EPA shall notify Respondents in writing of the activities that must be undertaken to complete the remedial action and shall set forth in the notice a schedule for performance of such activities. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If U.S. EPA concludes, following the initial or any subsequent certification of completion by Respondents that the remedial action has been fully performed in accordance with this Order, U.S. EPA may notify Respondents that the remedial action has been fully performed. U.S. EPA's notification shall be based on present knowledge and Respondent's certification to U.S. EPA, and shall not limit U.S. EPA's right to perform periodic reviews pursuant to § 121 (c) of CERCLA, 42 U.S.C. § 9621 (c), or to take or require any action that in the judgment of U.S. EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

#### VIII. PERIODIC REVIEW

43. Under § 121 (c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, where hazardous substances will remain on Site at the completion of the remedial action, U.S. EPA may review the Site to assure that the work performed pursuant to this Order adequately protects human health and the environment. Until such time as U.S. EPA certifies completion of the work, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by U.S. EPA in order to permit U.S. EPA to conduct the review under § 121 (c) of CERCLA. As a result of any review performed under this paragraph, Respondents may be required to perform additional work or to modify work previously performed.

#### IX. ADDITIONAL RESPONSE ACTIONS

44. In the event that U.S. EPA determines that additional work or modifications to work are necessary to meet performance standards, to maintain consistency with the final remedy, or to otherwise protect human health or the environment, U.S. EPA will notify Respondents that

additional response actions are necessary. U.S. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

45. Within thirty (30) days of receipt of notice from U.S. EPA that additional response activities are necessary, Respondents shall submit for approval an Additional RD/RA Workplan pursuant to paragraph 32 herein. The Additional RD/RA Workplan shall conform to this Order's requirements for RD and RA Workplans. Upon U.S. EPA's approval of the (Amended) Additional RD/RA Workplan, the (Amended) Additional RD/RA Workplan shall become an enforceable part of this Order, and Respondents shall implement the (Amended) Additional RD/RA Workplan for additional response activities in accordance with the standards, specifications, and schedule contained therein. Failure to submit an Additional RD/RA Workplan shall constitute noncompliance with this Order.

#### X. ENDANGERMENT AND EMERGENCY RESPONSE

46. In the event of any occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify U.S. EPA's RPM or alternate RPM. If neither of these persons is available Respondents shall notify the U.S. EPA Emergency Response Unit, Region V. Respondents shall take further action in consultation with U.S. EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the health and safety plan and the contingency plan. In the event that Respondents fail to take appropriate response action as required by this paragraph, and U.S. EPA takes that action instead, Respondents shall reimburse U.S. EPA for all costs of the response action not inconsistent with the NCP. Respondents shall pay the response costs in the manner described in section XIX (reimbursement of response costs) of this Order, within thirty (30) days of U.S. EPA's demand for payment.

47. Nothing in the preceding paragraph 46 shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

## XI. PROGRESS REPORTS

48. In addition to the other deliverables set forth in this Order, Respondents shall provide monthly progress reports to U.S. EPA and Illinois EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the 10th day of each month following the effective date of this Order. Respondent's obligation to submit progress reports continues until U.S. EPA gives Respondents written notice under paragraph 84 of this Order. At a minimum, these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondents and not previously submitted to U.S. EPA; (3) describe all work planned for the next 90-days with schedules relating such work to the overall project schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

## XII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

49. Respondents shall use the quality assurance, quality control, and chain of custody procedures described in the "U.S. EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986, U.S. EPA-330/9-78-001-R; U.S. EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation," June 1, 1987; U.S. EPA's "Data Quality Objective Guidance," (U.S. EPA/540/G87/003 and 004), and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondents shall:

a. Prior to the commencement of any sampling and analysis under this Order, Respondents shall submit a Quality Assurance Project Plan (QAPP) to U.S. EPA and Illinois EPA that is consistent with the SOW, (amended) workplans, U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80), and any subsequent amendments.

b. Prior to the development and submittal of a QAPP, Respondent(s) shall attend a pre-QAPP meeting sponsored by U.S. EPA to identify all monitoring and data quality objectives. U.S. EPA, after review of the submitted QAPP, will either approve, conditionally approve, or

disapprove the QAPP. Upon notification of conditional approval or disapproval, Respondents shall make all required modifications to the QAPP within twenty-one (21) days of receipt of such notification.

c. Use only laboratories which have a documented Quality Assurance Program that complies with U.S. EPA guidance document QAMS-005/80 and subsequent amendments.

d. Ensure that the laboratory used by the Respondents for analyses, performs according to a method or methods deemed satisfactory to U.S. EPA and submits all protocols to be used for analyses to U.S. EPA at least 30 days before beginning analysis.

e. Ensure that U.S. EPA personnel and U.S. EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondents for analyses.

50. Respondents shall notify U.S. EPA and Illinois EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split or duplicate samples of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition, U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary.

### XIII. COMPLIANCE WITH APPLICABLE LAWS

51. All activities by Respondents pursuant to this Order shall be performed in accordance with the requirements of all federal and State laws and regulations. U.S. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan.

52. Except as provided in § 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the work conducted entirely on-Site. Where any portion of the work requires a federal or State permit, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

53. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

### XIV. REMEDIAL PROJECT MANAGER

54. All communications, whether written or oral, from Respondents to U.S. EPA shall be directed to U.S. EPA's Remedial Project Manager ("RPM"). Respondents shall submit to U.S.

EPA ten (10) copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by mail such that they are postmarked no later than the due date. U.S. EPA's Remedial Project Manager is:

John J. O'Grady  
77 West Jackson Blvd., SR-6J  
Chicago, IL, 60604-3590  
(312) 886-1477

U.S. EPA's Alternate Remedial Project Manager is:

Donald J. Bruce  
77 West Jackson Blvd., SR-6J  
Chicago, IL, 60604-3590  
(312) 886-7241

The State Agency contact person is:

Richard Lange  
Illinois Environmental Protection Agency  
P.O. Box 1515  
LaSalle, IL, 61301-3515  
(815) 223-6836

55. U.S. EPA may change its Remedial Project Manager or Alternate Remedial Project Manager. If U.S. EPA changes its Remedial Project Manager or Alternate Remedial Project Manager, U.S. EPA will inform Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager or Alternate Remedial Project Manager.

56. U.S. EPA's RPM and Alternate RPM shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the National Contingency Plan. U.S. EPA's RPM or Alternate RPM shall have authority, consistent with the NCP, to halt any work required by this Order, and to take any necessary response action.

#### XV. PROJECT COORDINATOR AND CONTRACTORS

57. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a Project Coordinator qualified to undertake and complete the requirements of this Order. The Project Coordinator shall be the RPM's primary point of contact with the Respondents and shall possess sufficient technical expertise regarding all aspects of the work. Within fifteen (15) days after the effective date of this Order, Respondents shall

notify U.S. EPA in writing of the name and qualifications of the Project Coordinator, including primary support entities and staff, proposed to be used in carrying out work under this Order.

U.S. EPA reserves the right to disapprove the proposed Project Coordinator.

58. Within thirty (30) days after U.S. EPA approves the RA Workplan, Respondents shall identify a proposed construction contractor and notify U.S. EPA in writing of the name, title, and qualifications of the construction contractor proposed to be used in carrying out work under this Order.

59. Respondents shall submit a copy of the construction contractor solicitation documents to U.S. EPA not later than five (5) days after publishing the solicitation documents. Upon U.S. EPA's request, Respondents shall submit complete copies of all bid packages received from all contract bidders.

60. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to U.S. EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the work required by this Order.

61. U.S. EPA retains the right to disapprove of the Project Coordinator and any contractor, including but not limited to remedial design contractors and construction contractors retained by the Respondents. In the event U.S. EPA disapproves a Project Coordinator or contractor, Respondents shall retain a new project coordinator or contractor to perform the work, and such selection shall be made within fifteen (15) days following the date of U.S. EPA's disapproval. If at any time, Respondents propose to use a new project coordinator or contractor, Respondents shall notify U.S. EPA of the identity of the new project coordinator or contractor at least fifteen (15) days before the new project coordinator or contractor performs any work under this Order.

#### XVI. SITE ACCESS AND DOCUMENT AVAILABILITY

62. In the event that the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by this response action, is owned in whole or in part by parties other than

those bound by this Order, Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owner(s), within sixty (60) days of the effective date of this Order. Said agreements shall provide access for U.S. EPA, its contractors and oversight officials, the State and its contractors, and Respondents or Respondents' authorized representatives and contractors. Said agreements shall specify that Respondents is not U.S. EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to U.S. EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify U.S. EPA of its failure to obtain access.

63. If Respondents cannot obtain the necessary access agreements, U.S. EPA may exercise non-reviewable discretion and; (1) use its legal authorities to obtain access for the Respondents; (2) conduct response actions at the property in question; or (3) terminate this Order. If U.S. EPA conducts a response action and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by U.S. EPA into its reports and deliverables. Respondents shall reimburse U.S. EPA, pursuant to section XIX (reimbursement of response costs) of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondents.

64. Respondents shall allow U.S. EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and its representatives or contractors pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting tests as U.S. EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to U.S. EPA by Respondents. Respondents shall allow U.S. EPA and its authorized representatives to enter the Site to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work

undertaken in carrying out this Order. Nothing herein shall limit U.S. EPA's right of entry or inspection authority under federal law, and U.S. EPA retains all of its information gathering and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes and regulations.

#### XVII. RECORD PRESERVATION

65. On or before the effective date of this Order, Respondents shall submit a written certification to U.S. EPA that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since the time of their notification of potential liability by U.S. EPA or the State. Respondents shall not dispose of any such documents without prior approval by U.S. EPA. Upon U.S. EPA's request, Respondents shall make all such documents available to U.S. EPA and shall submit a log of any such documents claimed to be privileged for any reason. This privilege log shall list, for each document, the date, author, addressees (including courtesy copies or "cc"s and "bcc"s) and subject matter of the document.

66. Respondents shall provide to U.S. EPA upon request, copies of all documents and information within their or their contractors', subcontractors' or agents' possession or control relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, traffic routing, correspondence, or other documents or information. Respondents shall also make available to U.S. EPA, its employees, agents, or representatives (for purposes of investigation) information gathering or testimony concerning the performance of the work.

67. Until ten (10) years after U.S. EPA provides notice pursuant to paragraph 84 of this Order, Respondents shall preserve, and shall instruct their contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the work. Upon the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information. and, upon request of the United States, Respondents shall deliver all such documents, records and information to U.S. EPA.

68. Respondents may assert a claim of business confidentiality covering part or all of the

information submitted to U.S. EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with § 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R.

§ 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by U.S. EPA will be given the protection specified in 40 C.F.R.

Part 2. If no such claim accompanies the information when it is submitted to U.S. EPA, it may be made available to the public by U.S. EPA or the State without further notice to the Respondents. Respondents shall not assert confidentiality claims with respect to any data or documents related to Site conditions, sampling, or monitoring.

69. Respondents shall maintain, for the period during which this Order is in effect, an index of documents that Respondents claim contain confidential business information ("CBI"). The index shall contain, for each document, the date, author, addressee, and subject of the document. Respondents shall submit an updated copy of the index to U.S. EPA with each new document(s) claimed to be CBI. The updated index shall also indicate any documents for which CBI claims have been withdrawn.

#### XVIII. DELAY IN PERFORMANCE

70. Any delay in performance of this Order according to its terms and schedules that is not properly justified by Respondents under the terms of this section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents obligations to fully perform all obligations under the terms and conditions of this Order.

71. Respondents shall notify U.S. EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to U.S. EPA's RPM or Alternate RPM within forty eight (48) hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within seven (7) days after notifying U.S. EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the

delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

#### XIX. REIMBURSEMENT OF RESPONSE COSTS

72. Respondents shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis an accounting of all oversight response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary Reports, or such other summary as may be certified by U.S. EPA, shall serve as the accounting and basis for payment demands.

73. Respondents shall, within thirty (30) days of receipt of each U.S. EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

74. Checks shall be made payable to the "U.S. EPA Hazardous Substances Superfund" and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

Respondents shall send copies of each transmittal letter and check to U.S. EPA's RPM.

#### XX. UNITED STATES NOT LIABLE

75. The United States and U.S. EPA are not to be construed as parties to, and do not assume any liability for, any contract entered into by the Respondents to carry out the activities pursuant to this Order. The proper completion of the work under this Order is solely the responsibility of the Respondents. The United States and U.S. EPA, by issuance of this Order, also assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or (their) directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity required by this Order.

## XXI. ENFORCEMENT AND RESERVATIONS

76. U.S. EPA reserves the right to bring an action against Respondents under § 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in § 107(a) of CERCLA.

77. Notwithstanding any other provision of this Order, at any time during the response action, U.S. EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

78. Nothing in this Order shall preclude U.S. EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as U.S. EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), *et seq.*, or any other applicable law. This Order shall not affect any Respondents' liability under CERCLA § 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

79. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

80. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

81. If a court issues an order that invalidates any provision of this Order or finds that Respondents has sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

## XXII. ACCESS TO ADMINISTRATIVE RECORD

82. The Section 106 Administrative Record is available for review on normal business days

between the hours of 9:00 a.m. and 5:00 p.m. at the U.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, Illinois. An Index of the Administrative Record is attached hereto as Attachment 5.

#### XXIII. EFFECTIVE DATE AND TERMINATION

83. This Order shall become effective thirty (30) days after the date of issuance.

84. Within thirty (30) days after Respondents concludes that all phases of the work have been fully performed, that the performance standards have been attained, and that all operation and maintenance activities have been completed, Respondents shall submit to U.S. EPA a written report by a registered professional engineer certifying that the work has been completed in full satisfaction of the requirements of this Order. U.S. EPA shall require such additional activities as may be necessary to complete the work or U.S. EPA may, based upon present knowledge and Respondent's certification to U.S. EPA, issue written notification to Respondents that the work has been completed, as appropriate, in accordance with the procedures set forth in paragraph 42 for Respondent's certification of completion of the remedial action. U.S. EPA's notification shall not limit U.S. EPA's right to perform periodic reviews pursuant to § 121(c) of CERCLA, 42 U.S.C. § 9621 (c), or to take or require any action that in the judgment of U.S. EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607. The provisions of this Order shall be deemed to be satisfied when U.S. EPA notifies Respondents in writing that Respondents have demonstrated, to U.S. EPA's satisfaction, that all terms of the Order have been completed. This notice shall not, however, terminate Respondents obligation to comply with section XVII of this Order (record preservation).

#### XXIV. NOTICE OF INTENT TO COMPLY

85. On or before the effective date of this Order, each Respondent must submit to U.S. EPA a written notice stating its unequivocal intention to comply with all terms of this Order, together with the written notice required by paragraph 65. In the event any Respondent fails to provide said written notice of its unequivocal intention to comply with this Order on or before the effective date, said Respondent shall be deemed to have refused to comply with this Order. A Respondent which fails to provide timely notice of its intent to comply with this Order shall thereafter have no authority to perform any response action at the Site, pursuant to §§ 104(a) and

122(e)(6) of CERCLA. In the event such a Respondent subsequently changes its decision and desires to acquire authority from U.S. EPA under § 104(a) and 122(e)(6) of CERCLA to undertake the work described in this Order, said Respondent must provide the notice described in this paragraph 85 to U.S. EPA and receive from U.S. EPA written permission and authority to proceed with work under this Order.

#### XXV. PENALTIES

86. Each Respondent shall be subject to civil penalties under § 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$27,500 for each day in which said Respondent violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, may result in liability under § 107 (c)(3) of CERCLA, 42 U.S.C. § 9607 (c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

#### XXVI. OPPORTUNITY TO COMMENT AND CONFER

87. On or before the effective date of this Order, each Respondent may submit written comments to U.S. EPA. Respondents asserting a "sufficient cause" defense under § 106(b) of CERCLA shall describe the nature of the any "sufficient cause" defense using facts that exist on or prior to the effective date of this Order. The absence of a response by U.S. EPA shall not be deemed to be acceptance of Respondent's assertions.

88. Within twenty (20) days after the date of issuance of this Order, Respondents may request a conference with the U.S. EPA to discuss this Order. If requested, the conference shall occur within forty-five (45) days of the date of issuance of this Order, at the office of U.S. EPA, Region 5, in Chicago, Illinois.

89. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intends to comply with this Order. This conference is not an evidentiary hearing and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order or to seek resolution of potential liability. No record of the conference (e.g. stenographic, tape or other physical record) will be made. At any conference held pursuant

to Respondent's request, Respondents may appear in person or by an attorney or other representative. Requests for a conference must be by telephone followed by written confirmation to U.S. EPA's RPM.

ADMINISTRATIVE ORDER FOR Tri-County/ Elgin Landfills Site

So Ordered, this 3<sup>rd</sup> day of November, 1999.

BY: \_\_\_\_\_  
William E. Muñoz  
Director, Superfund Division  
U.S. Environmental Protection Agency, Region 5

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## LIST OF ATTACHMENTS

Attachment 1	Record of Decision
Attachment 2	SOW
Attachment 3	Groundwater ESD
Attachment 4	Cap ESD
Attachment 5	Administrative Record Index
Attachment 6	Site Map Identifying the Tri-County portion of the Site and the Elgin Landfill portion of the Site
Attachment 7	Elgin Remedy ESD



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

0000019

147358

NOV 13 1999

REPLY TO THE ATTENTION OF

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Waste Management, Inc.  
Lisa Zebovitz, Esq.  
Neal, Gerber & Eisenberg  
Two North La Salle Street  
Chicago, Illinois 60602

Tri-County Landfill Company  
Edward M. Maher, Esq.  
Suite 101  
One Court Place  
Rockford, IL 61101

Re: **Unilateral Administrative Order for the Tri-County/ Elgin Landfills Site**

Dear Ms. Zebovitz and Mr. Maher:

Enclosed please find a Unilateral Administrative Order issued by the U.S. Environmental Protection Agency ("U.S. EPA") under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within 20 days after issuance of the Order. If you have any questions regarding the Order, please contact Constandina K. Dalianis, Associate Regional Counsel, at (312) 353-1027, or John J. O'Grady, Remedial Project Manager, at (312) 886-1477.

Sincerely yours,

William E. Mund, Director  
Superfund Division

Enclosure

cc: Richard Lange, IEPA

Ms. Dee Brnich  
Vice President, Closed Sites  
Waste Management, Inc.  
720 Butterfield Road  
Oak Brook, Illinois 60148

Jack Dowden, Midwest Area Director  
Closed Sites Management Group  
Waste Management, Inc.  
720 Butterfield Road  
Oak Brook, Illinois 60148

Browning-Ferris Industries of Illinois, Inc.  
Sue Honegger, Esq.  
Lathrop & Gage  
9401 Indian Creek Parkway  
1050/40 Corporate Woods  
Overland Park, Kansas 66210

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region V

In The Matter Of:

**The Tri-County/ Elgin Landfills Site**

WASTE MANAGEMENT OF ILLINOIS, INC.;  
TRI-COUNTY LANDFILL COMPANY;

Respondents

CERCLIS ID# ILD 048 306 138; SITE SPILL ID# 052G

Proceeding Under Section 106(a) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act of 1980,  
as amended (42 U.S.C. § 9606(a))

V-W-CC-C-3

**ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN AND REMEDIAL ACTION  
FOR THE TRI-COUNTY PORTION OF THE SITE**

**I. INTRODUCTION AND JURISDICTION**

1. This Order directs Respondents to (1) perform a Remedial Action ("RA") for the Tri-County portion of the Tri-County/ Elgin Landfills Site ("Site") by implementing the approved 100% Final Remedial Design for the remedy described in the Record of Decision for the Tri-County/ Elgin Landfills Site, dated September 30, 1992, as modified by an Explanation of Significant Differences ("ESD"), dated April 23, 1998, and an Explanation of Significant Differences, dated July 14, 1999, and (2) perform for the Tri-County portion of the Site a Remedial Design ("RD") for the groundwater treatment remedy as described in the Record of

Decision for the Tri-County Elgin Landfills Site, dated September 30, 1992, and deferred by the June 25, 1996, Explanation of Significant Differences, and to implement the design by performing a Remedial Action for the groundwater treatment remedy at the Tri-County portion of the Site. This Order is issued to Respondents by the United States Environmental Protection Agency under the authority vested in the President of the United States by § 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926), and was further delegated to the Regional Administrator on September 13, 1987, by U.S. EPA Delegation No. 14-14 and 14-14A, and to the Director, Waste Management Division, Region V, by delegation 14-14B.

a. Issuance of this Order supercedes and replaces all terms, conditions and requirements of the Unilateral Administrative Order dated September 24, 1998, that was previously issued to Waste Management of Illinois, Inc and Tri-County Landfill Company.

## II. PARTIES BOUND

2. This Order shall apply to and be binding upon each Respondent identified in paragraph 8 and its successors and assigns. Each Respondent is jointly and severally responsible for carrying out all activities required by this Order. Failure of one or more Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondents. No change in the ownership, corporate status, or other control of any Respondent shall alter any of the Respondents' responsibilities under this Order.

3. Each Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, subcontractor, laboratory, or consultant retained to perform any work under this Order, within five (5) days after the effective date of this Order or on the date such services are retained, whichever is later. Respondents shall also provide a copy of this Order to any person acting on behalf of Respondents with respect to the Site or the work and shall ensure that all contracts and subcontracts entered into hereunder require performance under the contract

to be in conformity with the terms and work required by this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of § 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, each Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents perform all work in accordance with this Order.

4. Not later than thirty (30) days prior to any transfer of any interest in any real property included within the Site, Respondents shall submit a true and correct copy of the transfer documents to U.S. EPA, and shall identify the transferee(s) by name, principal business address and effective date of the transfer.

### III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or are incorporated by reference into this Order, the following definitions shall apply:

a. "Cap Construction Explanation of Significant Differences" or "Cap ESD" shall mean the U.S. EPA Explanation of Significant Differences and all attachments thereto relating to the Site signed on April 23, 1998, by the Director of the Superfund Division, U.S. EPA Region 5. The Cap ESD is part of the administrative record supporting this Order, and is incorporated by reference as part of this Order.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day.

d. "Elgin Landfill Remedy Explanation of Significant Differences" or "Elgin Remedy ESD" shall mean the U.S. EPA Explanation of Significant Differences and all attachments thereto relating to the Site signed on July 14, 1999, by the Director of the Superfund

Division, U.S. EPA Region 5. The Elgin Remedy ESD is part of the administrative record supporting this Order, and is incorporated by reference as part of this Order.

e. "Elgin Landfill portion of the Site" shall mean that portion of the of the Tri-County/Elgin Landfills Superfund Site on the northern side of the Site that encompasses approximately 20 acres of land that includes the Elgin Landfill property located near the Village of South Elgin, Kane County, in northeastern Illinois, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and areas adjacent thereto. See Attachment 6.

f. "Groundwater Explanation of Significant Differences" or "Groundwater ESD" shall mean the U.S. EPA Explanation of Significant Differences and all attachments thereto relating to the Site signed on June 25, 1996, by the Director of the Superfund Division, U.S. EPA Region 5. The Groundwater ESD is part of the administrative record supporting this Order, and is incorporated by reference as part of this Order.

g. "Illinois EPA" shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of the State.

h. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund, established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

i. "National Oil and Hazardous Substances Pollution Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to § 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

j. "Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan(s) approved or developed by U.S. EPA pursuant to this Order and the attachments hereto.

k. "Owner Respondents" shall mean Waste Management of Illinois, Inc. and Tri-County Landfill Company.

l. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

m. "Performance Standards" shall mean those cleanup standards, standards of

control, and other substantive requirements, criteria or limitations, identified in the Record of Decision, as modified by both ESDs, and the Statement of Work, that the Remedial Action and Work required by this Order must attain and maintain.

n. "Record of Decision" or "ROD" shall mean the U.S. EPA Record of Decision relating to the Site, signed on September 30, 1992, by the Regional Administrator, U.S. EPA, Region V, and all attachments thereto, which is attached hereto and made a part hereof as Attachment I.

o. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, the 100% Final Remedial Design, the Landfill Cap ESD, the Groundwater ESD, the Elgin Remedy ESD, the Remedial Action Work Plans, and other plans approved by U.S. EPA.

p. "Response Costs" shall mean all costs, including direct costs, indirect costs, and interest incurred by the United States to perform or support response actions at the Site, including, but not limited to, contract and enforcement costs.

q. "Section" shall mean a portion of this Order identified by a Roman numeral and includes one or more paragraphs.

r. "Section 106 Administrative Record" shall mean the Administrative Record which includes all documents considered or relied upon by U.S. EPA in preparation of this Order. The Section 106 Administrative Record Index is a listing of all documents included in the Section 106 Administrative Record, and is attached hereto as Attachment 5.

s. "Site" shall mean the Tri-County/ Elgin Landfills Site, encompassing approximately 66 acres of both the Tri-County and Elgin Landfills, located near the Village of South Elgin, Kane County, in northeastern Illinois, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and areas adjacent thereto.

t. "Special Account" shall mean a subaccount established within the Hazardous Substance Trust Fund pursuant to CERCLA Section 122(b)(3) which allows U.S. EPA to maintain and administer settlement funds on a site-specific basis.

u. "State" shall mean the State of Illinois.

v. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Attachment 2 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

w. "Tri-County portion of the Site" shall mean that portion of the of the Tri-County/Elgin Landfills Superfund Site on the southern side of the Site that encompasses approximately 47 acres of land that includes the Tri-County Landfill property and the Elgin-Wayne property located near the Village of South Elgin, Kane County, in northeastern Illinois, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and areas adjacent thereto. See Attachment 6.

x. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

y. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

z. "Work" shall mean all activities Respondents are required to perform under this Order and all attachments hereto, including, but not limited to, Remedial Design, Remedial Action and Operation and Maintenance.

aa. "100% Final Remedial Design" or "RD" shall mean the Remedial Design Document produced pursuant to the February 2, 1994, Administrative Order on Consent ("AOC"), and approved with modifications by U.S. EPA, in consultation with Illinois EPA, on September 30, 1997. The 100% Final Remedial Design document is part of the administrative record supporting this Order, and is incorporated by reference as part of this Order.

#### IV. DETERMINATIONS

6. Based on information available on the effective date of this Order, the U.S. EPA makes the following determinations:

a. The Site encompasses both the Tri-County and Elgin Landfills. The Site is located in northeastern Illinois on the east side of Kane County near the triple junction of Kane, Cook, and DuPage Counties. The two landfills were designated as one site because sampling results

indicated that contaminants from the two landfills were commingled.

b. The Tri-County Landfill, an inactive landfill of approximately 46 acres, and the Elgin Landfill, a landfill of approximately 20 acres, are located 2/3 of a mile southeast of the Village of South Elgin.

c. The Tri-County Landfill property was part of a gravel mining operation prior to the 1940s. Disposal of industrial, commercial, and household waste began in April 1968 and continued until December 1976, under a series of disposal permits and owners/operators. The existing landfill cover was installed in early 1981.

d. The Elgin Landfill property was also the site of a sand and gravel mining business that was operated until the late 1950s. Waste disposal operations began in 1961 with the landfill accepting a variety of residential and commercial wastes, incinerator ash, and construction and demolition refuse. Waste disposal operations continued at the Elgin Landfill until approximately 1978. The property has recently been used for disposal of construction and landscaping material.

e. At present, several commercial enterprises operate out of buildings on top of the Site. The land to the west of the Site is occupied by the Woodland Landfill, an active sanitary landfill which has accepted municipal and selected special wastes since 1976. Immediately to the north of the Site is a State of Illinois conservation area. Northwest of the Site is agricultural land and wetland. To the south of the Site are undeveloped upland and wetland areas.

f. Hazardous substances have been and are threatened to be released at or from the Site, including both the Tri-County portion of the Site and the Elgin Landfill portion of the Site. Commercial, industrial, and domestic wastes were disposed of at the Site. Migration and degradation of these wastes resulted in a release of hazardous substances. Evidence suggests that disposal of certain types of industrial wastes have occurred at the Site, including benzene, chlorobenzene, 1,1-dichloroethane, chloroethane, 1,1,-dichloroethene, tetrachloroethene, acenaphthene, bis (2-chloroethyl) ether, 1,4-dichlorobenzene, aluminum, ammonia, arsenic, barium, boron, chloride, copper, cyanide, manganese, nickel, vanadium, zinc, chromium, vinyl chloride, trichloroethene, lead, mercury, and fluoride.

g. As a result of the release or threatened release of hazardous substances, U.S. EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA,

42 U.S.C. § 9604, and will undertake response actions in the future.

7. The following information was available at the time of this Order regarding site ownership, waste transporters, and waste generators:

a. From approximately 1972 to the present, Respondent Waste Management of Illinois, Inc. ("WMI") has been an owner and operator of portions of the Site, including the Tri-County portion of the Site. During this time, hazardous substances were disposed of at the Site.

b. From approximately 1968 to the present, Respondent Tri-County Landfill Company ("TCLC") has been an owner and operator of portions of the Site, including the Tri-County portion of the Site. During this time, hazardous substances were disposed of at the Site.

c. Respondent WMI accepted waste, including hazardous substances, for transport to, and disposal or treatment at, the Site, including the Tri-County portion of the Site, and selected the Site for disposal or treatment.

d. Respondent TCLC accepted waste, including hazardous substances, for transport to, and disposal or treatment at, the Site, including the Tri-County portion of the Site, and selected the Site for disposal or treatment.

8. The Respondents identified in paragraph 7 are collectively referred to as "Respondents."

9. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA placed the Tri-County/Elgin Landfills Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 13, 1989, 54 Fed. Reg. 10512.

10. Enforcement History

a. On June 26, 1987, the potentially responsible parties ("PRPs") at the Site, including the Respondents, were notified in writing of the opportunity to conduct a Remedial Investigation and Feasibility Study (RI/FS) under U.S. EPA supervision. RI/FS negotiations ended in February, 1988, without an agreement having been reached with the PRPs.

b. On February 2, 1994, U.S. EPA entered into an Administrative Order on Consent ("AOC") with Waste Management of Illinois, Inc. ("WMI") and Browning-Ferris Industries of Illinois, Inc. ("BFI"). Under this AOC, WMI and BFI agreed to perform the Pre-Design and Remedial Design ("RD") activities at the Tri-County/Elgin Landfills Site. The Pre-Design Investigation Report was completed and approved by U.S. EPA on January 19, 1996. The

Remedial Design was completed and approved by U.S. EPA on September 30, 1997.

c. Special Notice was sent to the PRPs, including the Respondents, on February 27, 1998. The 120 day Special Notice Moratorium originally expired on July 10, 1998, without an agreement having been reached on a Consent Decree ("CD"). U.S. EPA extended the negotiation moratorium until August 21, 1998, with provision for an additional extension (contingent upon sufficient progress) of two weeks until September 4, 1998. On August 21, 1998, BFI informed U.S. EPA that it did not intend to continue with negotiations. On August 25, 1998, WMI informed U.S. EPA that it did not intend to continue with negotiations. On August 26, 1998, the U.S. EPA sent WMI and BFI letters that officially terminated negotiations.

d. On September 24, 1998, a Unilateral Administrative Order for remedial action was issued to WMI and the TCLC. On November 19, 1998, a Unilateral Administrative Order for remedial action was issued to BFI.

11. In April 1988, in response to a release or a substantial threat of a release of a hazardous substances at or from the Site, U.S. EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

12. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 24, 1992, in a major local newspaper of general circulation. U.S. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. Similarly, Respondents were given an opportunity to comment on the proposed plan for remedial action and to supplement the Administrative Record regarding a decision for selection of the final plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

13. The decision by U.S. EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 1992, on which the State has given its concurrence. The ROD includes U.S. EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b)

of CERCLA. The ROD is an enforceable part of this Order and is attached hereto as Attachment 1. The ROD is supported by an Administrative Record which contains the documents and information upon which U.S. EPA based the selection of the response action. The U.S. EPA's selected response action set out in the ROD has been determined to provide adequate protection of public health, welfare and the environment; to meet all federal and State environmental laws; and to be cost effective.

14. Most of the residential properties in the vicinity of the Site are located in the Village of South Elgin, west of the Woodland Landfill, approximately one mile west of the Site. The residences nearest the Site are located along Dunham and Stearns Roads approximately 1,000 feet southeast of the site. A farm house is located approximately 1,200 feet north of the Site. Other residences, most of which are single-family dwellings, are scattered throughout the area surrounding the Site. Many of the homes and businesses in the area of the landfills rely on their own private wells to provide drinking water and water for general use.

15. The history of the Site includes two distinct disposal operations, the Tri-County Landfill and the Elgin Landfill. Historical aerial photographs indicate that these two disposal operations had overlapping disposal areas and the landfill wastes appear to be continuous between the two landfills. The Tri-County/Elgin Landfills are functionally one contiguous disposal unit with separate ownership and operating histories.

a. Waste disposal at the Tri-County Landfill reportedly began in April, 1968, and continued until December, 1976. Commercial and municipal wastes were disposed of at the Site. Inspection records on file at the Illinois EPA cite open dumping at the landfill and that the "area" method of land filling was occasionally used. Background data suggests that waste was disposed of directly into the abandoned gravel quarry. Problems reported at the landfill included: confined dumping, inadequate daily cover, blowing litter, fires, lack of access restrictions, and leachate flows. Although the landfill operations ceased in December of 1976, the existing cover was not emplaced until early 1981.

b. At the Elgin Landfill property, waste disposal operations began in 1961 under the name of the Elgin Landfill Company. Information indicates that from 1961 to 1968 residential and commercial wastes were disposed at the Elgin Landfill. From 1968 to 1972, the Elgin

Landfill accepted waste and incinerator ash from residential and commercial customers. The Elgin Landfill continued to accept wastes after 1972, until approximately 1978, pursuant to various disposal permits.

16. The U.S. EPA conducted a Remedial Investigation and Feasibility Study (RI/FS) from 1988 to 1992, to define the nature and extent of contamination and evaluate alternatives for Site cleanup. The RI identified contamination in soil, sediment, and ground water, and determined that a primary pathway for the contaminants to migrate off-site is through rain and snowmelt infiltrating through the inadequate landfill cover, leaching contaminants from the landfilled materials, and transporting the contaminants to ground water and surface water by surface and subsurface flow. The U.S. EPA completed the RI Report on July 24, 1992, and the FS Report on July 24, 1992. The Final RI/FS Report was approved on September 30, 1992. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the U.S. EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 24, 1992, in a major local newspaper of general circulation. The U.S. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

a. Results from the initial RI fieldwork identified contaminated ground water in the northwest portion of the Tri-County Landfill. Based on the preliminary information, it was not possible to determine if the ground water was being impacted by: 1) only the Tri-County Landfill, 2) both the Tri-County Landfill and the adjacent Elgin Landfill, or 3) only the Elgin Landfill. Therefore, it was necessary to expand the RI investigation to include an investigation of the adjacent Elgin Landfill. Contamination was discovered in the surface soils, surface water, sediments, and local ground water of both the Tri-County Landfill and the adjacent Elgin Landfill. It was also discovered that the Site generates a significant amount of landfill gas, which is venting to the air through openings in the landfill cover materials. The contamination at the Site was found to include a variety of contaminants.

b. The RI shows that the local ground water generally flows from the northeast to the southwest. The shallow ground water beneath the landfills is contaminated with a variety of

contaminants, both organic and inorganic, above established drinking water standards. The results for the downgradient shallow ground water indicates contamination of benzene, trichloroethene, and vinyl chloride slightly above established drinking water standards. Numerous other chemicals have been detected at the Site.

**17. Risk to Human Health, Welfare and the Environment**

a. Following the RI, an analysis was conducted to estimate the potential health or environmental problems that could result if remedial action was not taken at the Site. This analysis is referred to as the Baseline Risk Assessment. The RI investigation documented widespread contamination in most media. The northwest portion of the Site seems to be impacted mostly by organic contamination, while the southern portion was impacted mostly by inorganic contamination. Also, sediments located in the leachate ditch south of the landfill were significantly impacted by heavy metals in the leachate. In 1984, the U.S. EPA detected volatile organic contaminants in ground water monitoring wells downgradient of the site.

b. The Baseline Risk Assessment considered many potential scenarios to evaluate actual or potential risks from the Site. The Baseline Risk Assessment documented unacceptable risks (exceeding risks which may cause one additional cancer case in 10,000 people exposed over a lifetime) for the following potential exposure pathways: 1) Future ingestion of contaminated ground water, 2) Future dermal exposure to ground water contaminants, and 3) Current and future inhalation of contaminated fugitive dust and volatile emissions from the landfill. The highest risks were associated with inhalation of contaminated fugitive dust and volatile emissions (approximately 2 additional cancer cases in 10 people exposed over a lifetime). These Baseline Risk Assessment findings apply to both the Tri-County portion of the Site and the Elgin Landfill portion of the Site.

c. As many as 10,000 residents within 3 miles of the site use ground water as their source of drinking water. U.S. EPA investigation has found low level ground water contamination outside of the Site boundaries, contaminated surface water and sediment in an adjacent wetland, and widespread contamination in surface soils at the Site including volatile and semi-volatile organic compounds, pesticides, and heavy metals.

d. Most of the residential properties in the vicinity of the Site are located in the

Village of South Elgin. Other residences, most of which are single-family dwellings, are scattered throughout the area surrounding the Site. Some of the homes and businesses in the area of the Site rely on their own private wells to provide drinking water and water for general use. Several businesses operate on the Site, itself, using water from wells that penetrate the landfill. These businesses are currently advised against potable use of their wells.

18. On September 30, 1992, U.S. EPA signed a Record of Decision (ROD) selecting an impermeable landfill cap with an active landfill gas collection system and groundwater extraction and treatment. The Illinois EPA concurred with the Site remedy. The major components of the 1992 ROD include:

- ▶ excavation and consolidation under the landfill cap of approximately 3,000 cubic yards of sediments contaminated with heavy metals from the adjacent wetland;
- ▶ construction of a landfill cover in compliance with Title 35, Illinois Solid and Special Waste Management Regulations, section 807.305 and RCRA Subtitle D cover requirements, as applicable;
- ▶ collection, treatment, and disposal of leachate and contaminated groundwater at the landfill perimeter;
- ▶ active collection and treatment of landfill gases;
- ▶ comprehensive monitoring program to ensure the effectiveness of the remedy;
- ▶ institutional controls to limit land and groundwater use; and
- ▶ provisions for contingency measures to address new information or previously unknown problems, and flexibility on type and timing of the ground water response component.

19. On February 2, 1994, U.S. EPA entered into an Administrative Order on Consent ("AOC") with WMI and BFI. Under this AOC, Respondents agreed to perform the Pre-Design and Remedial Design ("RD") activities at the Site. The Remedial Design for the landfill cover was completed and approved by the U.S. EPA on September 30, 1997. The cover profile is significantly different from that specified in the ROD. The change was determined to be necessary in order to ensure long-term effectiveness, and promote short-term effectiveness and implementability. Section 117 (c) of CERCLA and Section 300.435(c)(2)(I) of the NCP establish procedures for explaining, documenting, and informing the public of significant changes to the

remedy that occur after the ROD is signed. An ESD is required when the remedial action to be taken differs from the remedy selected in the ROD. Generally, an ESD is prompted when significant new information becomes available during or after the public comment period for the ROD. In this case, U.S. EPA considered it appropriate to issue an ESD for the landfill cap, which was finalized April 23, 1998.

20. Remedy Design and Efficacy

a. The selected remedy is designed to address all unacceptable risks associated with the Site. The selected remedy will address: 1) the contaminated ground water currently migrating off-site, 2) the contaminated sediments located in the leachate ditch, 3) the contaminated surface soils which create an inhalation risk, 4) the emissions of landfill gases.

b. The U.S. EPA and Illinois EPA have conducted an analysis of the potential remedies and have developed a clean-up plan for the Site. The clean-up plan, or the preferred alternative, is a combination of remedies developed for the various contaminated media.

c. The selected remedy consists of draining the standing surface water on the Site and a small portion of the wetland area to the south of the Site. The contaminated sediments in the wetland will be excavated until local background concentrations are met. The contaminated sediments and the drummed drill cuttings stored on-site will be consolidated within the landfill area prior to construction of the cap. The affected area of the wetlands will be restored after excavation of the contaminated sediments.

d. Precipitation run-off will be drained to the wetland area south of the Site to make-up for the loss of ground water discharge to the area.

e. A ground water collection system, if the U.S. EPA determines that it is necessary, will collect contaminated ground water as it leaves the Site. The trenches will be placed in such a way to optimize the collection of the off-site contaminated ground water.

f. The emission of landfill gas will be controlled by an active collection system. The gas will be collected by extraction wells connected to a blower facility. The gas will pass through a condensate tank to remove moisture, and would then be treated on-site by flaring prior to being discharged to the atmosphere. The emission of the treated landfill gas will comply with all substantive requirements for control of landfill gas.

g. The selected remedy will contain and or cap the landfill contents in accordance with established State and Federal laws and regulations.

21. The Site, including both the Tri-County portion of the Site and the Elgin Landfill portion of the Site, is a "facility" as defined in § 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Each Respondent is a "person" as defined in § 101(21) of CERCLA, 42 U.S.C. § 9601(21).

23. Each Respondent is a liable party as defined in § 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under § 106(a) of CERCLA, 42 U.S.C. § 9606(a).

24. "Hazardous substances" as defined in § 101(14) of CERCLA, 42 U.S.C. § 9601(14) are present at the Site and at both the Tri-County portion of the Site and the Elgin Landfill portion of the Site.

25. These hazardous substances have been, are being, and threaten to be "released" from the Facility as that term is defined in § 101(22) of CERCLA, 42 U.S.C. § 9601(22).

26 Release of Hazardous Substances

a. The past disposal and migration of hazardous substances from the Facility constitutes a "release".

b. The potential for future migration of hazardous substances from the Site poses a threat of a "release" as defined in § 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. The release of one or more hazardous substances from the Facility is or may be presenting an imminent and substantial endangerment to the public health or welfare or the environment.

28. The actions required by this Order are necessary to protect the public health, welfare, or the environment and are consistent with the National Contingency Plan, as amended, and CERCLA.

V. NOTICE TO THE STATE

29. U.S. EPA has notified the State of Illinois, Illinois Environmental Protection Agency, that U.S. EPA intends to issue this Order. U.S. EPA will consult with the State and the State will have the opportunity to review and comment to U.S. EPA regarding all work to be performed, including remedial design, reports, technical data and other deliverables, and any other issues which arise while the Order remains in effect.

## VI. ORDER

30. Based on the foregoing, each Respondent is hereby ordered to comply with all of the provisions of this Order, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines contained in this Order, attached to this Order, or incorporated by reference into this Order.

## VII. WORK TO BE PERFORMED

31. Within five (5) days after the effective date of this Order, each Respondent that owns real property comprising any part of the Site shall record Notice of and/or a copy of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of said notice and/or Order is indexed to the title of each and every parcel of property owned by said Respondent at the Site, so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondents shall, within 15 days after the effective date of this Order, send notice of such recording and indexing to U.S. EPA.

32. All workplans, reports, engineering design documents, and other deliverables (workplans and deliverables), as described throughout this Order, shall be submitted to Illinois EPA (except documents claimed to contain confidential business information) and U.S. EPA. All workplans and deliverables will be reviewed and either approved, approved with modifications, or disapproved by U.S. EPA, in consultation with Illinois EPA. In the event of approval or approval with modifications by U.S. EPA, Respondents shall proceed to take any action required by the workplan, report, or other item, as approved or modified by U.S. EPA. If the workplan or other deliverable is approved with modifications or disapproved, U.S. EPA will provide, in writing, comments or modifications required for approval. Respondents shall amend the workplan or other deliverable to incorporate only those comments or modifications required by U.S. EPA. Within twenty-one (21) days of the date of U.S. EPA's written notification of approval with modifications or disapproval, Respondents shall submit an amended workplan or other deliverable. U.S. EPA shall review the amended workplan or deliverable and either approve or disapprove it. Failure to submit a workplan, amended workplan or other deliverable shall constitute noncompliance with this Order. Submission of an amended workplan or other

deliverable which fails to incorporate all of U.S. EPA's required modifications, or which includes other unrequested modifications, shall also constitute noncompliance with this Order. Approval by U.S. EPA of the (amended) workplan or other deliverable shall cause said approved (amended) workplan or other deliverable to be incorporated herein as an enforceable part of this Order. If any (amended) workplan or other deliverable is not approved by U.S. EPA, Respondents shall be deemed to be in violation of this Order.

33. In the event of an inconsistency between this Order and any subsequent approved (amended) workplan or other deliverable, the terms of this Order shall control.

34. Remedial Design Implementation

a. The Respondents shall implement for the Tri-County portion of the Site the approved 100% Final Remedial Design for the remedy described in the Record of Decision for the Tri-County/ Elgin Landfills Site, as modified by the Explanation of Significant Differences, dated April 23, 1998, and the Explanation of Significant Differences, dated July 14, 1999. The 100% Final Remedial Design and the Cap ESD are incorporated by reference into and are an enforceable parts of this Order.

b. Within sixty (60) days after the effective date of this Order, Respondents shall submit to U.S. EPA and Illinois EPA a work plan for the performance of the Remedial Action at the Tri-County portion of the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the Record of Decision for the Tri-County/ Elgin Landfills Site, as modified by the Explanation of Significant Differences, dated April 23, 1998, and the Explanation of Significant Differences, dated July 14, 1999, in accordance with this Order, the ROD, the 100% Final Remedial Design, and the design plans and specifications approved by U.S. EPA. Upon its approval by U.S. EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Order.

c. The Remedial Action Work Plan shall include the following: (1) The schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans and for implementation of all Remedial Action tasks; (4) methodology for implementation of the Construction Quality Assurance Plan ("CQAP"); (5) a groundwater monitoring plan; (6) methods for satisfying

permitting requirements: (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the Remedial Design Document and shall identify the initial formulation of the Respondents' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

d. Upon approval of the (Amended) RA Workplan by U.S. EPA, Respondents shall implement the (Amended) RA Workplan in accordance with any and all instructions from U.S. EPA's Remedial Project Manager ("RPM") and in accordance with the schedules in the (Amended) RA Workplan. Unless otherwise directed by U.S. EPA, Respondents shall not commence remedial action at the Site prior to approval of the (Amended) RA Workplan. Any noncompliance with the approved (Amended) RA Workplan shall be a violation of this Order.

35. Remedial Design for the Groundwater Treatment Remedy

a. The Remedial Design for the Groundwater Treatment Remedy relates to implementation of the groundwater extraction and treatment component described in the Record of Decision for the Tri-County/ Elgin Landfills Site, dated September 30, 1992, and deferred by the June 25, 1996, Explanation of Significant Differences.

b. When U.S. EPA determines that implementation of the portions of the remedy deferred by the Groundwater ESD must begin, then, within 60 days after issuance by U.S. EPA of a written direction to begin such implementation ("Design Notice"), the Respondents shall submit to U.S. EPA, and Illinois EPA, a work plan for the design of the deferred portion(s) of the Remedial Action at the Tri-County portion of the Site ("Supplemental Remedial Design Work Plan" or "Supplemental RD Work Plan"). The Design Notice will identify to the Respondents which deferred portion of the remedy is to be implemented. One or more Design Notices may be issued to implement the portions of the remedy set forth in the ROD and deferred by the Groundwater ESD. The Supplemental Remedial Design Work Plan(s) shall provide for design of the remedy set forth in the ROD, the Groundwater ESD and the SOW, as appropriate, and for

achievement of the Performance Standards and other requirements set forth in the ROD, the Groundwater ESD, this Order and the SOW. Upon its approval by U.S. EPA, the Supplemental Remedial Design Work Plan(s) shall be incorporated into and become enforceable under this Order. Within 60 days after U.S. EPA's issuance of Design Notice, the Respondents shall submit to U.S. EPA and the State a Health and Safety Plan for field design activities that conforms to the applicable Occupational Safety and Health Administration and U.S. EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Supplemental Remedial Design Work Plan(s) shall include plans and schedules for implementation of supplemental remedial design and supplemental pre-design tasks for the portions of the remedy deferred by the Groundwater ESD and identified in the SOW in accordance with the Design Notice(s).

c. Upon approval of the Supplemental Remedial Design Work Plan(s) by U.S. EPA and submittal of the Health and Safety Plan for all field activities to U.S. EPA and Illinois EPA, the Respondents shall implement the Supplemental Remedial Design Work Plan(s) at the Tri-County portion of the Site. The Respondents shall submit to U.S. EPA and Illinois EPA all plans, submittals and other deliverables required under the approved Supplemental Remedial Design Work Plan(s) in accordance with the approved schedule for review and approval. Unless otherwise directed by U.S. EPA, Respondents shall not commence further Supplemental Remedial Design activities at the Site prior to approval of the Supplemental Remedial Design Work Plan(s).

d. The preliminary supplemental design submittal(s) shall include, at a minimum, the following: (1) design criteria; (2) results of any treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate supplemental design submittal(s), if required by U.S. EPA or if independently submitted by the Respondents, shall be a continuation and expansion of the preliminary supplemental design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final supplemental design submittal(s) shall include, at a minimum,

the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Tri-County portion of the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

g. The pre-final/final supplemental remedial design submittal(s), upon approval by U.S. EPA, shall become part of the Remedial Design and shall be implemented as part of the Remedial Action.

h. Upon approval of the (Amended) Supplemental Remedial Design Workplan by U.S. EPA, Respondents shall implement the (Amended) Supplemental Remedial Design Workplan at the Tri-County portion of the Site and submit all design deliverables according to the schedule in the approved (Amended) Supplemental Remedial Design Workplan. Any noncompliance with the approved (Amended) Supplemental Remedial Design Workplan shall be a violation of this Order.

36. Remedial Action for the Groundwater Treatment Remedy

a. Within sixty (60) days after the approval of any Supplemental Remedial Design for that portion of Remedial Action deferred by the Groundwater ESD, the Respondents shall submit to U.S. EPA and Illinois EPA, a work plan for the performance of the Groundwater Remedial Action at the Tri-County portion of the Site (the "Groundwater Remedial Action Work Plan"). The Groundwater Remedial Action Workplan shall provide for construction and implementation of the remedy set forth in the ROD, as deferred by the Groundwater ESD, and achievement of the Performance Standards, in accordance with this Order, the ROD, and the design plans and specifications approved by U.S. EPA. Upon its approval by U.S. EPA, the Groundwater Remedial Action Workplan shall be incorporated into and become enforceable under this Order.

b. The Groundwater Remedial Action Workplan shall include the following: (1) the schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3)

schedule for developing and submitting other required Remedial Action plans and for implementation of all Remedial Action tasks; (4) methodology for implementation of the Construction Quality Assurance Plan ("CQAP"); (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Groundwater Remedial Action Workplan also shall include a schedule for implementation of all Remedial Action tasks identified in the Remedial Design Document and shall identify the initial formulation of the Respondents' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Groundwater Remedial Action Workplan by U.S. EPA, the Respondents shall implement the activities required under the Groundwater Remedial Action Workplan at the Tri-County portion of the Site. The Respondents shall submit to U.S. EPA and the State all plans, submittals, or other deliverables required under the approved Groundwater Remedial Action Workplan in accordance with the approved schedule for review and approval. Unless otherwise directed by U.S. EPA, the Respondents shall not commence physical Remedial Action activities at the Site prior to approval of the Groundwater Remedial Action Workplan.

d. The Respondents shall continue to implement the Groundwater Remedial Action and O&M at the Tri-County portion of the Site until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Order.

37. All work performed by Respondents pursuant to this Order shall, at a minimum, achieve the Performance Standards specified in the Record of Decision and the Statement of Work.

38. Nothing in this Order, or in U.S. EPA's approval of any (amended) workplan or other deliverable, shall be deemed to constitute a warranty or representation of any kind by U.S. EPA that full performance of the remedial design or remedial action will achieve the performance standards set forth in the ROD and in the Statement of Work. Respondents' compliance with such approved documents does not foreclose U.S. EPA from seeking additional work.

39. All materials removed from the Facility shall be disposed of or treated at a facility

approved in advance of removal by U.S. EPA's RPM and in accordance with: 1) § 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); 2) the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6901, et seq., as amended; 3) the U.S. EPA "Revised Off-Site policy," OSWER Directive 9834.11, November 13, 1987; and 4) all other applicable federal, State, and local requirements. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for remedial action construction. Respondents shall provide written notice to the RPM which shall include all relevant information, including the information required by paragraph 40 below, as soon as practicable after the award of the contract and before the hazardous substances are actually shipped off-Site.

40. Prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, Respondents shall provide written notification to the appropriate state environmental official in the receiving state and to U.S. EPA's RPM of such shipment of hazardous substances. However, the notification of shipments to the state shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the state will not exceed ten (10) cubic yards. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

41. Respondents shall cooperate with U.S. EPA in providing information regarding the work to the public. When requested by U.S. EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by U.S. EPA to explain activities at or relating to the Site.

42. Within thirty (30) days after Respondents conclude that the remedial action has been fully performed, Respondents shall so notify U.S. EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondents and U.S. EPA. The pre-certification inspection shall be followed by a written report submitted within thirty (30) days of the

inspection by a registered professional engineer or Respondents' Project Coordinator certifying that the remedial action has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the written report, U.S. EPA determines that the remedial action or any portion thereof has not been completed in accordance with this Order, U.S. EPA shall notify Respondents in writing of the activities that must be undertaken to complete the remedial action and shall set forth in the notice a schedule for performance of such activities. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If U.S. EPA concludes, following the initial or any subsequent certification of completion by Respondents that the remedial action has been fully performed in accordance with this Order, U.S. EPA may notify Respondents that the remedial action has been fully performed. U.S. EPA's notification shall be based on present knowledge and Respondent's certification to U.S. EPA, and shall not limit U.S. EPA's right to perform periodic reviews pursuant to § 121 (c) of CERCLA, 42 U.S.C. § 9621 (c), or to take or require any action that in the judgment of U.S. EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

#### VIII. PERIODIC REVIEW

43. Under § 121 (c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, where hazardous substances will remain on Site at the completion of the remedial action, U.S. EPA may review the Site to assure that the work performed pursuant to this Order adequately protects human health and the environment. Until such time as U.S. EPA certifies completion of the work, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by U.S. EPA in order to permit U.S. EPA to conduct the review under § 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondents may be required to perform additional work or to modify work previously performed.

#### IX. ADDITIONAL RESPONSE ACTIONS

44. In the event that U.S. EPA determines that additional work or modifications to work are necessary to meet performance standards, to maintain consistency with the final remedy, or to otherwise protect human health or the environment, U.S. EPA will notify Respondents that additional response actions are necessary. U.S. EPA may also require Respondents to modify any

plan, design, or other deliverable required by this Order, including any approved modifications.

45. Within thirty (30) days of receipt of notice from U.S. EPA that additional response activities are necessary, Respondents shall submit for approval an Additional RD/RA Workplan pursuant to paragraph 32 herein. The Additional RD/RA Workplan shall conform to this Order's requirements for RD and RA Workplans. Upon U.S. EPA's approval of the (Amended) Additional RD/RA Workplan, the (Amended) Additional RD/RA Workplan shall become an enforceable part of this Order, and Respondents shall implement the (Amended) Additional RD/RA Workplan for additional response activities in accordance with the standards, specifications, and schedule contained therein. Failure to submit an Additional RD/RA Workplan shall constitute noncompliance with this Order.

#### X. ENDANGERMENT AND EMERGENCY RESPONSE

46. In the event of any occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify U.S. EPA's RPM or alternate RPM. If neither of these persons is available Respondents shall notify the U.S. EPA Emergency Response Unit, Region V. Respondents shall take further action in consultation with U.S. EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the health and safety plan and the contingency plan. In the event that Respondents fail to take appropriate response action as required by this paragraph, and U.S. EPA takes that action instead, Respondents shall reimburse U.S. EPA for all costs of the response action not inconsistent with the NCP. Respondents shall pay the response costs in the manner described in section XIX (reimbursement of response costs) of this Order, within thirty (30) days of U.S. EPA's demand for payment.

47. Nothing in the preceding paragraph 46 shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

## XI. PROGRESS REPORTS

48. In addition to the other deliverables set forth in this Order, Respondents shall provide monthly progress reports to U.S. EPA and Illinois EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the 10th day of each month following the effective date of this Order. Respondent's obligation to submit progress reports continues until U.S. EPA gives Respondents written notice under paragraph 84 of this Order. At a minimum, these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondents and not previously submitted to U.S. EPA; (3) describe all work planned for the next 90-days with schedules relating such work to the overall project schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

## XII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

49. Respondents shall use the quality assurance, quality control, and chain of custody procedures described in the "U.S. EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986, U.S. EPA-330/9-78-001-R; U.S. EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation," June 1, 1987; U.S. EPA's "Data Quality Objective Guidance," (U.S. EPA/540/G87/003 and 004), and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondents shall:

a. Prior to the commencement of any sampling and analysis under this Order, Respondents shall submit a Quality Assurance Project Plan (QAPP) to U.S. EPA and Illinois EPA that is consistent with the SOW, (amended) workplans, U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80), and any subsequent amendments.

b. Prior to the development and submittal of a QAPP, Respondent(s) shall attend a pre-QAPP meeting sponsored by U.S. EPA to identify all monitoring and data quality objectives. U.S. EPA, after review of the submitted QAPP, will either approve, conditionally approve, or

disapprove the QAPP. Upon notification of conditional approval or disapproval, Respondents shall make all required modifications to the QAPP within twenty-one (21) days of receipt of such notification.

c. Use only laboratories which have a documented Quality Assurance Program that complies with U.S. EPA guidance document QAMS-005/80 and subsequent amendments.

d. Ensure that the laboratory used by the Respondents for analyses, performs according to a method or methods deemed satisfactory to U.S. EPA and submits all protocols to be used for analyses to U.S. EPA at least 30 days before beginning analysis.

e. Ensure that U.S. EPA personnel and U.S. EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondents for analyses.

50. Respondents shall notify U.S. EPA and Illinois EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split or duplicate samples of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition, U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary.

### XIII. COMPLIANCE WITH APPLICABLE LAWS

51. All activities by Respondents pursuant to this Order shall be performed in accordance with the requirements of all federal and State laws and regulations. U.S. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan.

52. Except as provided in § 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the work conducted entirely on-Site. Where any portion of the work requires a federal or State permit. Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

53. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

### XIV. REMEDIAL PROJECT MANAGER

54. All communications, whether written or oral, from Respondents to U.S. EPA shall be directed to U.S. EPA's Remedial Project Manager ("RPM"). Respondents shall submit to U.S.

EPA ten (10) copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by mail such that they are postmarked no later than the due date. U.S. EPA's Remedial Project Manager is:

John J. O'Grady  
77 West Jackson Blvd., SR-6J  
Chicago, IL, 60604-3590  
(312) 886-1477

U.S. EPA's Alternate Remedial Project Manager is:

Donald J. Bruce  
77 West Jackson Blvd., SR-6J  
Chicago, IL, 60604-3590  
(312) 886-7241

The State Agency contact person is:

Richard Lange  
Illinois Environmental Protection Agency,  
P.O. Box 1515  
LaSalle, IL, 61301-3515  
(815) 223-6836

55. U.S. EPA may change its Remedial Project Manager or Alternate Remedial Project Manager. If U.S. EPA changes its Remedial Project Manager or Alternate Remedial Project Manager, U.S. EPA will inform Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager or Alternate Remedial Project Manager.

56. U.S. EPA's RPM and Alternate RPM shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the National Contingency Plan. U.S. EPA's RPM or Alternate RPM shall have authority, consistent with the NCP, to halt any work required by this Order, and to take any necessary response action.

#### XV. PROJECT COORDINATOR AND CONTRACTORS

57. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a Project Coordinator qualified to undertake and complete the requirements of this Order. The Project Coordinator shall be the RPM's primary point of contact with the Respondents and shall possess sufficient technical expertise regarding all aspects of the work. Within fifteen (15) days after the effective date of this Order, Respondents shall

notify U.S. EPA in writing of the name and qualifications of the Project Coordinator, including primary support entities and staff, proposed to be used in carrying out work under this Order.

U.S. EPA reserves the right to disapprove the proposed Project Coordinator.

58. Within thirty (30) days after U.S. EPA approves the RA Workplan, Respondents shall identify a proposed construction contractor and notify U.S. EPA in writing of the name, title, and qualifications of the construction contractor proposed to be used in carrying out work under this Order.

59. Respondents shall submit a copy of the construction contractor solicitation documents to U.S. EPA not later than five (5) days after publishing the solicitation documents. Upon U.S. EPA's request, Respondents shall submit complete copies of all bid packages received from all contract bidders.

60. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to U.S. EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the work required by this Order.

61. U.S. EPA retains the right to disapprove of the Project Coordinator and any contractor, including but not limited to remedial design contractors and construction contractors retained by the Respondents. In the event U.S. EPA disapproves a Project Coordinator or contractor, Respondents shall retain a new project coordinator or contractor to perform the work, and such selection shall be made within fifteen (15) days following the date of U.S. EPA's disapproval. If at any time, Respondents propose to use a new project coordinator or contractor, Respondents shall notify U.S. EPA of the identity of the new project coordinator or contractor at least fifteen (15) days before the new project coordinator or contractor performs any work under this Order.

#### XVI. SITE ACCESS AND DOCUMENT AVAILABILITY

62. In the event that the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by this response action, is owned in whole or in part by parties other than

those bound by this Order. Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owner(s), within sixty (60) days of the effective date of this Order. Said agreements shall provide access for U.S. EPA, its contractors and oversight officials, the State and its contractors, and Respondents or Respondents' authorized representatives and contractors. Said agreements shall specify that Respondents is not U.S. EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to U.S. EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify U.S. EPA of its failure to obtain access.

63. If Respondents cannot obtain the necessary access agreements, U.S. EPA may exercise non-reviewable discretion and; (1) use its legal authorities to obtain access for the Respondents; (2) conduct response actions at the property in question; or (3) terminate this Order. If U.S. EPA conducts a response action and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by U.S. EPA into its reports and deliverables. Respondents shall reimburse U.S. EPA, pursuant to section XIX (reimbursement of response costs) of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondents.

\* — 64. Respondents shall allow U.S. EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and its representatives or contractors pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting tests as U.S. EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to U.S. EPA by Respondents. Respondents shall allow U.S. EPA and its authorized representatives to enter the Site to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work

undertaken in carrying out this Order. Nothing herein shall limit U.S. EPA's right of entry or inspection authority under federal law, and U.S. EPA retains all of its information gathering and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes and regulations.

#### XVII. RECORD PRESERVATION

65. On or before the effective date of this Order, Respondents shall submit a written certification to U.S. EPA that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since the time of their notification of potential liability by U.S. EPA or the State. Respondents shall not dispose of any such documents without prior approval by U.S. EPA. Upon U.S. EPA's request, Respondents shall make all such documents available to U.S. EPA and shall submit a log of any such documents claimed to be privileged for any reason. This privilege log shall list, for each document, the date, author, addressees (including courtesy copies or "cc"s and "bcc"s) and subject matter of the document.

66. Respondents shall provide to U.S. EPA upon request, copies of all documents and information within their or their contractors', subcontractors' or agents' possession or control relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, traffic routing, correspondence, or other documents or information. Respondents shall also make available to U.S. EPA, its employees, agents, or representatives (for purposes of investigation) information gathering or testimony concerning the performance of the work.

67. Until ten (10) years after U.S. EPA provides notice pursuant to paragraph 84 of this Order, Respondents shall preserve, and shall instruct their contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the work. Upon the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, Respondents shall deliver all such documents, records and information to U.S. EPA.

68. Respondents may assert a claim of business confidentiality covering part or all of the

information submitted to U.S. EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with § 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R.

§ 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by U.S. EPA will be given the protection specified in 40 C.F.R.

Part 2. If no such claim accompanies the information when it is submitted to U.S. EPA, it may be made available to the public by U.S. EPA or the State without further notice to the Respondents. Respondents shall not assert confidentiality claims with respect to any data or documents related to Site conditions, sampling, or monitoring.

69. Respondents shall maintain, for the period during which this Order is in effect, an index of documents that Respondents claim contain confidential business information ("CBI"). The index shall contain, for each document, the date, author, addressee, and subject of the document. Respondents shall submit an updated copy of the index to U.S. EPA with each new document(s) claimed to be CBI. The updated index shall also indicate any documents for which CBI claims have been withdrawn.

#### XVIII. DELAY IN PERFORMANCE

70. Any delay in performance of this Order according to its terms and schedules that is not properly justified by Respondents under the terms of this section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents obligations to fully perform all obligations under the terms and conditions of this Order.

71. Respondents shall notify U.S. EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to U.S. EPA's RPM or Alternate RPM within forty eight (48) hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within seven (7) days after notifying U.S. EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the

delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

#### XIX. REIMBURSEMENT OF RESPONSE COSTS

72. Respondents shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis an accounting of all oversight response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary Reports, or such other summary as may be certified by U.S. EPA, shall serve as the accounting and basis for payment demands.

73. Respondents shall, within thirty (30) days of receipt of each U.S. EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

74. Checks shall be made payable to the "U.S. EPA Hazardous Substances Superfund" and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

Respondents shall send copies of each transmittal letter and check to U.S. EPA's RPM.

#### XX. UNITED STATES NOT LIABLE

75. The United States and U.S. EPA are not to be construed as parties to, and do not assume any liability for, any contract entered into by the Respondents to carry out the activities pursuant to this Order. The proper completion of the work under this Order is solely the responsibility of the Respondents. The United States and U.S. EPA, by issuance of this Order, also assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or (their) directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity required by this Order.

## XXI. ENFORCEMENT AND RESERVATIONS

76. U.S. EPA reserves the right to bring an action against Respondents under § 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in § 107(a) of CERCLA.
77. Notwithstanding any other provision of this Order, at any time during the response action, U.S. EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.
78. Nothing in this Order shall preclude U.S. EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as U.S. EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), *et seq.*, or any other applicable law. This Order shall not affect any Respondents' liability under CERCLA § 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.
79. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.
80. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.
81. If a court issues an order that invalidates any provision of this Order or finds that Respondents has sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

## XXII. ACCESS TO ADMINISTRATIVE RECORD

82. The Section 106 Administrative Record is available for review on normal business days

between the hours of 9:00 a.m. and 5:00 p.m. at the U.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, Illinois. An Index of the Administrative Record is attached hereto as Attachment 5.

#### XXIII. EFFECTIVE DATE AND TERMINATION

83. This Order shall become effective sixty (30) days after the date of issuance.

84. Within thirty (30) days after Respondents concludes that all phases of the work have been fully performed, that the performance standards have been attained, and that all operation and maintenance activities have been completed, Respondents shall submit to U.S. EPA a written report by a registered professional engineer certifying that the work has been completed in full satisfaction of the requirements of this Order. U.S. EPA shall require such additional activities as may be necessary to complete the work or U.S. EPA may, based upon present knowledge and Respondent's certification to U.S. EPA, issue written notification to Respondents that the work has been completed, as appropriate, in accordance with the procedures set forth in paragraph 42 for Respondent's certification of completion of the remedial action. U.S. EPA's notification shall not limit U.S. EPA's right to perform periodic reviews pursuant to § 121 (c) of CERCLA, 42 U.S.C. § 9621 (c), or to take or require any action that in the judgment of U.S. EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607. The provisions of this Order shall be deemed to be satisfied when U.S. EPA notifies Respondents in writing that Respondents have demonstrated, to U.S. EPA's satisfaction, that all terms of the Order have been completed. This notice shall not, however, terminate Respondents obligation to comply with section XVII of this Order (record preservation).

#### XXIV. NOTICE OF INTENT TO COMPLY

85. On or before the effective date of this Order, each Respondent must submit to U.S. EPA a written notice stating its unequivocal intention to comply with all terms of this Order, together with the written notice required by paragraph 65. In the event any Respondent fails to provide said written notice of its unequivocal intention to comply with this Order on or before the effective date, said Respondent shall be deemed to have refused to comply with this Order. A Respondent which fails to provide timely notice of its intent to comply with this Order shall thereafter have no authority to perform any response action at the Site, pursuant to §§ 104(a) and

122(e)(6) of CERCLA. In the event such a Respondent subsequently changes its decision and desires to acquire authority from U.S. EPA under § 104(a) and 122(e)(6) of CERCLA to undertake the work described in this Order, said Respondent must provide the notice described in this paragraph 85 to U.S. EPA and receive from U.S. EPA written permission and authority to proceed with work under this Order.

#### XXV. PENALTIES

86. Each Respondent shall be subject to civil penalties under § 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$27,500 for each day in which said Respondent violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, may result in liability under § 107 (c)(3) of CERCLA, 42 U.S.C. § 9607 (c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

#### XXVI. OPPORTUNITY TO COMMENT AND CONFER

87. On or before the effective date of this Order, each Respondent may submit written comments to U.S. EPA. Respondents asserting a "sufficient cause" defense under § 106(b) of CERCLA shall describe the nature of the any "sufficient cause" defense using facts that exist on or prior to the effective date of this Order. The absence of a response by U.S. EPA shall not be deemed to be acceptance of Respondent's assertions.

88. Within twenty (20) days after the date of issuance of this Order, Respondents may request a conference with the U.S. EPA to discuss this Order. If requested, the conference shall occur within 45 (forty-five) days of the date of issuance of this Order, at the office of U.S. EPA, Region 5, in Chicago, Illinois.

89. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intends to comply with this Order. This conference is not an evidentiary hearing and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order or to seek resolution of potential liability. No record of the conference (e.g. stenographic, tape or other physical record) will be made. At any conference held pursuant

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to Respondent's request. Respondents may appear in person or by an attorney or other representative. Requests for a conference must be by telephone followed by written confirmation to U.S. EPA's RPM.

ADMINISTRATIVE ORDER FOR Tri-County Elgin Landfills Site

So Ordered, this 3<sup>rd</sup> day of Nov., 1999.

BY: \_\_\_\_\_

William E. Muno  
Director, Superfund Division  
U.S. Environmental Protection Agency, Region V